Official Gazette

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OFFICIAL WEEK IN REVIEW

April 2.—PRESIDENT Garcia exuded enthusiasm as he saw "new faces" at the traditional Easter Sunday luncheon he and Mrs. Garcia tendered at the Mansion House.

The guest, composed of Cabinet members, Justices, members of Congress, provincial and Baguio City officials, and close friends and relatives of the First Couple of the land, were received at the picnic grove of the Mansion House.

Among those who attended the luncheon were Rep. Sergio Osmeña, Jr., Sen. A. Padilla, and Aurelio Montinola.

This afternoon President Garcia proclaimed Rep. Ramon Mitra as official NP candidate for reelection in the second district of Mountain Province.

Mitra was chosen earlier official candidate of the Nacionalista Party at a convention held at the Trinidad Agricultural School.

After Mitra's proclamation, President Garcia turned over to Baguio City Mayor Luis Lardizabal a check for ₱200,000 for the Convention Hall of Baguio.

In the presence of some three hundred delegates, the President lauded the choice of Mitra as proof of the people's confidence in his brilliant record as a lawmaker for six terms and as chairman of the House foreign affairs committee.

The President was roundly applauded when he said that Mitra's choice will reflect the people's confidence in the Nacionalista Party, which will be in a better position to serve the nation with tried and true men like Mitra.

In turning over the check for Convention Hall, the President underscored its importance because of an increasing holding of international conferences in Baguio owing to the Philippines' active participation in the United Nations.

Early in the morning the President and Mrs. Garcia heard mass at the Guest House. Also present were Mr. and Mrs. Fernando Campos, Sens. Gil J. Puyat and Eulogio Balao, and Rep. and Mrs. Jose Aldeguer.

After breakfast the President began receiving guests to the traditional Eastern Sunday luncheon. After luncheon the President retired to his room before receiving scheduled callers and proclaiming Mitra.

April 3.—PRESIDENT Garcia congratulated Finance Secretary Dominador Aytona and Commissioner Melecio R. Domingo of the Bureau of Internal Revenue for their "repeat performance" of last year's increased collections.

The President publicly commended the two officials during a conference at the Guest House in which Commissioner Domingo reported that BIR contributed ₱736 million to the aggregate ₱1 billion income in 1960, or roughly 73.6 per cent.

Domingo said that the actual receipts from the period from July to December, 1960, amounted to ₱291 million, exceeding the budget estimate of ₱274 million by roughly ₱17 million.

The BIR head said that with the adoption of several measures, his office expects another increase of ₱33 million during the last semester of the current fiscal year, or a total increase of ₱50 million for the whole year.

Comparing the July to December, 1960, collection by both the BIR and the Customs of ₱637 million with ₱538 million collection of July to December, 1959, Domingo said that a general increase of ₱99 million was achieved.

The President emphasized that the achievement was more remarkable considering that there were no new sources of collections, no new tax laws were enacted, and the tax rates remain stationary.

Domingo informed the President that the increased collections were due to: (1) assignment of 2000 collection agents to replace local treasurers who did not devote full time; (2) adoption of the "pay as you file" system in which half of the tax due is collectible at filing of income tax returns to discourage delinquency and make available for use such collection; (3) use of new techniques acquired abroad by pensionados under ICA grants; (4) weeding out of undesirables resulting in the filing of 500 administrative cases mostly against field personnel; and (5) diminishing percentage of tax exemptions to new and necessary industries until next year.

Earlier this morning the President received Carlos Palanca and Ramon Del Rosario, who paid their respects and discussed business with the Chief Executive; Elections Commissioner Genaro Vizarra and Sixto Brillantes, who assured the President of a clean, honest, and orderly elections in November and who sought a Baguio site for the use of the elections commission.

The President also received justices of the Supreme Court who called on him at the Guest House. The justices were Cesar Bengson, Sabino Padilla, Felix Bautista Angelo, Alejo Labrador, Roberto Concepcion, J. B. L. Reyes, Jesus Barrera, and Arsenio Dizon.

He also received Foreign Affairs Secretary Felixberto Serrano, who briefed him on the full implication of the Laotian crisis.

April 4.—EARLY this morning the President played golf at the Mansion House golf course and told newsmen later he was improving in his new game.

After his golf game the President had breakfast with newsmen at the Guest House. He told newsmen at the Guest House he was inclined to sign the new bill passed by Congress declaring April 9 as a regular public holiday.

The President also took up the political developments as reported to him by Executive Secretary Natalio P. Castillo and Secretary of Labor Angel Castaño by telephone and by wire.

He said he was optimistic the primary proposed in the amity meeting held last February 4 will go through.

In golf parlance, the President said, if the presidential race were golf, he would give the Senate President a handicap of 120.

At 9:15 o'clock this morning the President was fetched by Secretary of Education Jose E. Romero to address the members of the Philippine Association of School Superintendents at the Teachers Camp.

President Garcia today assured some 200 school superintendents that his administration will continue its educational program of giving emphasis on the development of the physical, mental, and moral values of the youth.

The Chief Executive made the assurance to members of the Philippine Association of Schools Superintendents who are holding their 52nd annual convention at Quezon-Roosevelt Hall in Baguio City from April 4 to 13.

The President said that much of the future socio-economic progress of the country depends on how effective the educational program could be carried out.

After delivering his speech the Chief Executive, together with the First Lady, were treated to a light snack at the Aldaba Hall in the Teachers' Camp.

During the snack the presidents of three major teacher organizations, on behalf of their respective members, expressed their gratitude to the Chief Executive, saying that "his is the only administration that has done a lot for the welfare of the teachers."

The three presidents, namely, F. Yanson of the PASS, Dominador K. Lopez of the Philippine Public School Teachers Association, and Apolinar Tolentino of the Philippine Association of Vocational Educators, also expressed their faith and confidence in the President and his administration.

The President was presented to the PASS members by Secretary Romero, while the welcome address was delivered by Mayor Lardizabal.

After his engagement with the PASS, the Chief Executive motored back to the Guest House where he had lunch.

At 2 p.m. the President, together with the First Lady and members of the presidential party, motored to Damortis where they boarded a special train for Manila, arriving in Manila at 8:10 p.m.

From the Tutuban MRR station the party proceeded to Malacañang where the President spent the night.

April 5.—PRESIDENT Garcia today spent the whole morning in his private residence in Quezon City, where he went over pending state papers which piled up during his seven-day stay in Baguio during the Holy Week.

Occasionally, political leaders visited the President and discussed developments in the political front brought about by the stalemate in the executive committee meeting of the Nacionalista Party last Monday.

The President had previously announced his readiness to meet Senate President Eulogio Rodriguez in a second amity conference in an effort to stave off a possible split in the majority party. Rodriguez has rejected the executive committee proposal for this amity meeting.

In the afternoon the President motored to Malacañang, where he received visiting German business executives who paid a courtesy call on him.

Berthold Beitz, chairman of the executive board of the Fried Krupp Essen, headed the German business executives. With Beitz were Count Ahlefeld-Laurig and Edward B. Unger. The German visitors were accompanied to Malacañang by Ramon S. Roco, president of the Machinery Engineering Supplies, Inc., and Helmuth Koenig, also of the same company.

After receiving the German business executives, the President presided over the regular meeting of the Cabinet. During the meeting the President took up the reported corn shortage in five Cebu towns.

After the Cabinet meeting the President motored to the Manila Hotel to attend the fifth anniversary dinner of the Norluzonian, an organization of civic leaders in Northern Luzon.

The Cabinet approved this evening terms and conditions for the sale of two National Development company-owned mills, the Ilocos Textile Mill and the Manila Textile Mill. The terms and conditions had been drawn up by a Cabinet committee.

Among the terms and conditions were:

1. Only bids offering a floor price of ₱4.5 million in the case of the Manila Textile Mill and ₱2.3 million in the case of the Ilocos Textile Mill, exclusive of inventories, shall be accepted.

2. The down payment for the Manila Textile Mill must be ₱1,350,000, and for the Ilocos Textile Mill, ₱690,000.

Another feature of the terms and conditions approved by the Cabinet was that successful bidders must set aside and reserve for at least two years a block of common and voting shares equivalent to at least 12.5 per cent of the authorized capital stock of the corporation to be allocated for purchase by N.D.C. workers.

The Cabinet also approved a proposal of Commerce Secretary Manuel Lim to invite representatives of four American cigar manufacturing firms who have indicated a desire to come to the Philippines to look into the possibility of getting their raw material supply here.

Lim informed the Cabinet that other tobacco-producing countries like Indonesia, Jamaica, and Brazil had extended similar invitations.

During the Cabinet meeting President Garcia brought up a Bulletin report about a famine in five towns in Cebu. He directed the NARIC, through Economic Coordinator Juan O. Chioco to:

1. Determine the veracity of the report; and

2. Rush corn grit supplies to the affected areas if the report is found to be true.

April 6.—THIS morning the President signed two bills into law, one proclaiming April 9 as Bataan Day and a legal holiday and the other appropriating the sum of ₱100,000 for the Seventh Anti-Communist Conference of Asians in Manila.

In proclaiming the ninth of April as Bataan Day, the President enjoined all Filipinos to observe a one-minute silence at 4:30 in the afternoon and to hold appropriate rites in honor of the heroic defenders of Bataan, their parents, wives, or widows.

By virtue of the President's action, April 10 this year become a legal holiday as provided for under the Revised Administrative Code, because April 9 falls on a Sunday.

Present at the signing of the bill (S. 483 and H. 941) at Malacañang this morning were Rep. Ramon Bagatsing of Manila, author of the bill; Brig. Gen. Dionisio Ojeda, president of the Veterans Federation of the Philippines; and officers of the Defenders of Bataan, including Maj. Gen. Alfredo M. Santos, overall chairman; Teodoro M. Kalaw, Jr., national commander; Antonio Varias, past national commander; Ernesto D. Rufino, Vice-national commander; Col. Oscar S. Santos, national adjutant; and Cols. Jose A. Arambulo and Salvador T. Paccio.

House Bill 4506, which was also signed by the President today, appropriates ₱100,000 out of the unused funds of the National Treasury for the transportation and accommodation of foreign delegates to the Seventh Asian People's Anti-Communist Conference which will be held in Manila from May 2 to 5 this year.

It being Congressmen's day at the palace, the President had a very heavy schedule.

Early this morning the President received Speaker Protempore Constancio Castañeda and his father-in-law, Toribio Teodoro, proprietor of Ang Tibay Shoes, who paid a social call on the Chief Executive.

Between callers, the President administered the oaths of affiliation with the Nacionalista Party to Mayor Bienvenido Marquez and five other former Liberals of Padre Burgos, Quezon, who were accompanied by Rep. Leon Guinto, Jr., and Mayor Santiago Quiloña of San Julian, Samar, who was accompanied by Rep. Felipe Abrigo and the mayors of Oras, Quinapandan, Arteche, and Hernani.

Other callers who took up problems of their respective localities and reiterated their pledges of support to the President were Senator Domocao Alonto and Lanao del Sur Vice-Gov. Mamintal Tamano and five others; Rep. Luis Hora of Mountain Province, who took up the question of the cultural minorities; Rep. Nicanor Iñiguez of Southern Leyte with a six-man delegation; Rep. Francisco Sumulong of Rizal; Vice-Mayor Maximo Gatlanbayan of Antipolo, Rizal; Rep. Jose Legaspi of Aklan; and Mayor Napoleon Dala of Libacao, Aklan.

President Garcia today extended a helping hand to change the bleak future of four children into a bright hope for a better life. He directed the V. Luna General Hospital to extend immediate hospitalization to Donato Baylon, a 63-year old beggar who supports a wife and four children.

The President also ordered the Social Welfare Administration to give the necessary financial aid to old man Baylon, who is suffering from an intestinal disease and is growing blind.

Deeply moved upon reading the sad plight of Baylon in an afternoon Manila newspaper, the President lost no time in having the old man located. He issued the twin directive expressing his conviction that Baylon's children should be afforded a better future.

Baylon manages to feed his family by begging all day long along Padre Faura near the Department of Foreign Affairs. His wife is a laundrywoman who earns one peso a day. He almost committed suicide three years ago from utter desperation springing from the fact that he lost his house, first wife, and three children during the war.

April 7.—PRESIDENT Garcia this morning reiterated the need for a permanent school financing act to avert the perennial school shortage which is becoming serious every year.

The President told the Council of Leaders at their breakfast meeting in Malacañang today that although one-third of the total budget is earmarked for education, it is barely enough to provide the rudimentary education provided in the Constitution.

The President also urged passage of a satisfactory foreign investment bill to create an attractive climate for foreign capital that may be invested for the development of the country.

Other matters taken up by the President with the Council of Leaders in their three-hour conference were:

(1) Appointments in the judiciary, which had been made by the President to clear the courts of a heavy backlog of cases;

(2) Abolition of the margin fee as a complementary measure to full decontrol; and

(3) Other administration bills pending in Congress.

The breakfast meeting started at 8:10 a.m. and lasted up to 12 noon.

Owing to the Senate session, Senate President Eulogio Rodriguez, who had arrived first, Senate President Protempore Fernando Lopez, and Senate Majority Floorleader Cipriano Primicias left the meeting at 10:30 a.m.

Present at the meeting were Speaker Daniel Z. Romualdez, Speaker Protempore Constancio Castañeda, House Majority Floor Leader Jose Aldeguer, and Executive Secretary Natalio P. Castillo.

This afternoon the President formally launched the restoration project of Fort Santiago and Intramuros by presenting a check for ₱1,000, as his personal contribution, to Manolo Elizalde, chairman of the finance committee.

The President was the guest of honor and speaker at the launching ceremony held at Fort Santiago.

Commerce Secretary Manuel Lim, in his capacity as chairman of the FSIRA Executive Board, and Benjardi M. Crame, co-chairman of the same board, accompanied the President from Malacañang to the fort.

After the ceremony President Garcia and other guests, including members of the diplomatic corps, inspected the shrine, with Carlos da Silva serving as guide.

The executive board is composed of Lim, chairman; Crame, co-chairman; and Andrew Gruber, Carlos Santiago, Yu Khe Thai, Gen. Dionisio Ojeda, C. S. Gonzales, Luis Ma. Araneta, Andres Soriano, Jr., Modesto Farolan, Carlos da Silva, Dannet Howe, Enrique Belo, Manuel Elizalde, and Gaudencio Antonio, members.

April 8.—THIS morning President Garcia emphasized the urgency of accelerating all phases of economic progress, and invited foreign friendly capital to come in and help develop the country.

The President extended his invitation during the inauguration of the Bataan refinery of STANVAC in Limay, Bataan, this morning, in which he was principal speaker.

In his speech before some 2,000 employees and guests, including government officials, members of the diplomatic corps, and prominent citizens, the President paid tribute to STANVAC as one of the greatest contributors to Philippine progress, and pointed to the expansion of its activities as a tangible evidence of American initiative and Filipino cooperation in action.

Earlier, the President decorated Christian A. Larsen, general manager, for his meritorious and praiseworthy efforts to contribute to the vigorous growth of Philippine economy as an executive of STANVAC.

The President conferred the Philippine Legion of Honor (Commander) on Larsen in recognition of his abiding faith in Philippine democratic institution, his efforts to promote harmonious labor-management relations, and the enrichment of Philippine journalism by providing deserving Filipinos with opportunities for advancement.

Larsen in his dedicatory address, and H. F. Prioleau, president and board member who came all the way from New York, affirmed America's confidence in the stability and bright future of Philippine economy, and thanked their Filipino workers without whom, they said, the establishment of the refinery could not have been possible.

Prioleau also expressed the hope that allied industries will find fresh encouragement in the example set by STANVAC and help the Philippines develop her economy to their mutual benefit.

Prioleau said that among the benefits to be derived in the establishment of the $45 million refinery in Bataan are:

(1) More employment and general prosperity;

(2) Vital knowledge to be acquired by Filipino technicians;

(3) Growth of allied industries, creating an industrial complex and giving the government a large share in the form of taxes; and

(4) Dollar savings of some $5 million annually.

Mrs. Leonila D. Garcia, who was assisted by Mesdames Pedro Dizon, Floro Roxas, Larsen, and Sen. Pacita M. Gonzalez, unveiled the plaque marking the inauguration of the plant, while President Garcia pushed the button which symbolically started operations.

The President, accompanied by the First Lady, Cabinet members, and Prioleau, left Pier 3 in Manila at 9:40 in the morning, arriving at Limay aboard the RPS *Lapu-Lapu* at 11:30 a.m.

From the wharf where the President was welcomed by Stanvac officials and prominent guests headed by Bataan Gov. Pedro Dizon and Limay Mayor Floro Roxas, the President toured the housing compound before proceeding to the ceremonial site.

After the inspection of the housing project, cocktails were served at the administration building, after which the guests were honored at a luncheon, during which the ceremonies were held.

Among those present at the ceremonies were Secretaries Alejo Mabanag of Justice, Manuel Lim of Commerce, Felixberto Serrano of Foreign Affairs, Alejo Santos of Defense, Cesar Fortich of Agriculture, OEC Administrator Juan O. Chioco, Budget Commissioner Faustino Sy-Changco, and a large group of chiefs of missions headed by United States Ambassador John D. Hickerson.

After the ceremonies the President motored back to the wharf and boarded at the *Lapu-Lapu* which shoved off for Manila at 2:40 p.m., arriving at Pier 3 shortly before 4 p.m.

In the course of his Bataan visit, the President was presented with a petition by former Gov. Emilio Ma. Naval, president of the Landowners and Farmers of the province, protesting the enforcement of Assessment Orders 14 and 16, which increased land values by over 100 per cent.

Gov. Naval informed the President that the last typhoons and floods had caused a big drop and severe losses in the harvests and that it was untimely to enforce the new assessment in order to raise more taxes.

Naval added that a stream of resolution from barrio and municipal councilors had forced Vice-Gov. Faustino V. Vigo to introduce a resolution requesting the secretary of finance to suspend the effectivity of Assessment Orders 14 and 16 for at least one year.

The President said that he will take up the matter with the secretary of finance.

President Garcia, in a message issued on Bataan Day, extrolled the unconquerable spirit of the defenders of Bataan, whose victory in defeat 18 years ago, provided a rich legacy in the unique Filipino-American partnership of today.

Recalling the fall of Bataan which had caused untold national sorrow for both the Philippines and the United States, the President said that "the indomitable spirit of Bataan never fell; thus was Filipino-American comradeship maintained during the dark war years in the crucible of guerrilla fury."

REPUBLIC ACTS

Enacted during the Fourth Congress of the Philippines
Third Session

H. No. 4790

[REPUBLIC ACT No. 2921]

AN ACT AMENDING ITEM (*i*), PAGE 151, PARAGRAPH 4, TITLE A, SECTION ONE OF REPUBLIC ACT NUMBERED TWELVE HUNDRED.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Item (*i*), page 151, paragraph 4, Title A, Section one of Republic Act Numbered Twelve hundred, as amended by Republic Act Numbered Fourteen hundred and sixty-four, is further amended to read as follows:

"*i.* Nueva Vizcaya

(2) Bayombong Home Economics Building, Bayombong ..... ₱5,000.00."

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 1729

[REPUBLIC ACT No. 2922]

AN ACT TO AMEND PRIORITY NUMBERS 7 AND 13, PAGE 58–B, GROUP III FOR THE PROVINCE OF LEYTE, APPENDIX B OF REPUBLIC ACT NUMBERED SIXTEEN HUNDRED THIRTEEN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Priority numbers 7 and 13, page 58–B, Group III for the Province of Leyte, Appendix B of Republic Act Numbered Sixteen hundred thirteen are hereby amended to read as follows:

"7	Malitbog	Maningning	Construction Community school building	4,000.00	
"13	Malitbog	Sta. Cruz	Construction of shop building	4,000.00	—

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 3731

[REPUBLIC ACT No. 2923]

AN ACT CHANGING THE NAMES OF CERTAIN BARRIOS IN THE MUNICIPALITY OF PRIETO-DIAZ, PROVINCE OF SORSOGON.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The names of the following barrios in the Municipality of Prieto-Diaz, Province of Sorsogon, are changed as follows:

1. Barrio Cayo to Barrio Santa Lourdes;
2. Barrio Manao to Barrio San Fernando;
3. Barrio Visitang-Daan to Barrio San Isidro;
4. Barrio Cagbulalacao to Barrio San Ramon;
5. Barrio Binuntulan to Barrio Santo Domingo; and
6. Barrio Pigbanua to Barrio San Rafael.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 1364

[REPUBLIC ACT No. 2924]

AN ACT AMENDING CERTAIN ITEMS IN REPUBLIC ACT NUMBERED SIXTEEN HUNDRED THIRTEEN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Item nineteen for the Province of Bataan, page 134, paragraph g, Section two of Republic Act Numbered Sixteen hundred thirteen is amended to read as follows:

"19. South Central Elementary School Building and premises Improvement, Orani ..... ₱5,000.00"

SEC. 2. Project numbers B–05.40 and B–05.51, page 258–A, and Project number B–05.60, page 260–A, Title B, for Highways (Feeder and Secondary Roads) Appendix A of the same Act, are amended to read as follows:

"B-05.40	Municipal Roads and Streets, Hermosa Improvement and asphalt paving	GR	15.00	15.00	15.00	.....	.....	.....	.....	.....	.....	2	.....	.....
"B-05.51	Mabini Street, Dinalupihan Improvement	GR	35.00	35.00	5.00	10.00	15.00	.....	5.00	.....	.....	2	.....	.....
"B-05.60	Mabini Street, Dinalupihan Improvement	GR	10.00	10.00	10.00	.....	.....	.....	.....	.....	.....	1	.....	.....

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 3944

[REPUBLIC ACT No. 2925]

AN ACT TO PROVIDE FOR TWO SCHOOL DIVISIONS IN THE MOUNTAIN PROVINCE

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There shall be two school divisions in the Mountain Province, one in the Subprovince of Benguet and the City of Baguio, and one in the Subprovinces of Bontoc, Ifugao, Apayao and Kalinga. The permanent station of the Superintendent of Schools of the Division of Benguet and Baguio shall be in the City of Baguio, and the permanent station of the Superintendent of Schools of the Division of Bontoc, Ifugao, Apayao and Kalinga, also to be known as the Division of BIAK, shall be in the Municipality of Bontoc. The City Council of Baguio is authorized to provide additional compensation to the Superintendent of Schools of the Division of Benguet and Baguio, payable from the funds of said city.

SEC. 2. The Director of Public Schools shall reorganize the school division of the Mountain Province into two school divisions commencing with the school year nineteen hundred sixty to nineteen hundred sixty-one, in accordance with the provisions of this Act.

SEC. 3. Such sums as may be necessary to carry out the purposes of this Act for the school year nineteen hundred sixty to nineteen hundred sixty-one is appropriated out of any funds in the National Treasury not otherwise appropriated. The sum necessary for the purpose in subsequent school years shall be included in the annual General Appropriations Act.

SEC. 4. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 3240

[REPUBLIC ACT No. 2926]

AN ACT CREATING CERTAIN BARRIOS IN THE PROVINCE OF BATANGAS

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitio of Capitan Maria is separated from the barrio of San Pioquinto in the Municipality of Malvar, Province of Batangas, and converted into a barrio of said municipality to be known as the barrio of Capitan Maria.

SEC. 2. The sitio of Ambulong, barrio of Tabañgao in the Municipality of Batangas, same province, is converted into a barrio of said municipality to be known as the barrio of Ambulong.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive Approval, June 19, 1960.

H. No. 3244

[REPUBLIC ACT No. 2927]

AN ACT TO ESTABLISH A SCHOOL OF ARTS AND TRADES IN THE MUNICIPALITY OF LASAM, PROVINCE OF CAGAYAN, AND TO AUTHORIZE THE APPROPRIATION OF FUNDS THEREFOR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There shall be established, under the supervision of the Director of Public Schools, a school of arts and trades in the Municipality of Lasam, Province of Cagayan, to be known as the Western Cagayan School of Arts and Trades.

SEC. 2. The sum of one hundred fifty thousand pesos is hereby authorized to be appropriated, out of any funds in the National Treasury not otherwise appropriated, for the establishment, operation and maintenance of said school.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 3775

[REPUBLIC ACT No. 2928]

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A SCHOOL OF FISHERIES IN THE MUNICIPALITY OF CORON, PROVINCE OF PALAWAN, TO BE KNOWN AS THE CORON SCHOOL OF FISHERIES, AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There shall be established, under the direct supervision of the Director of Public Schools, a school of fisheries in the Municipality of Coron, Province of Palawan, to be known as the Coron School of Fisheries.

SEC. 2. The Director of Fisheries shall be *ex-officio* dean of the Coron School of Fisheries, serving in such capacity without additional compensation. Subject to the approval of the Secretary of Agriculture and Natural Resources, the Director of Fisheries is authorized to detail to said school such officers and employees of the Bureau of Fisheries as may be necessary and to employ experts in fishing for the purpose of giving instruction to the students therein.

SEC. 3. The Secretary of Education shall promulgate such rules and regulations as may be necessary to carry out the purpose of this Act.

SEC. 4. The sum of one hundred thousand pesos is hereby authorized to be appropriated, out of any funds in the National Treasury not otherwise appropriated, for the establishment, operation and maintenance of said school during the fiscal year nineteen hundred sixty-one. Such sums as may be needed for its operation and maintenance in subsequent years shall be included in the annual General Appropriations Act.

SEC. 5. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4791

[REPUBLIC ACT No. 2929]

AN ACT AMENDING CERTAIN ITEMS UNDER REPUBLIC ACT NUMBERED NINETEEN HUNDRED

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Item 14, page 484 under the Province of Nueva Vizcaya, paragraph *g*, Section two of Republic Act Numbered Nineteen hundred is amended to read as follows:

"14. Bambang various public improvements ₱8,000.00"

SEC. 2. Item (*d*), page 947, subparagraph 34, under the Province of Nueva Vizcaya, paragraph *a*, Title G, Section three of the same Act is hereby amended to read as follows:

"(*d*) Bagabag Communal Irrigation System ..... ₱150,000.00
"(*e*) Bone-Imugan Communal Irrigation.. 25,000.00
"(*f*) Magat–La Torre–Wagal–Bintawan Irrigation ..... 25,000.00"

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4809

[REPUBLIC ACT No. 2930]

AN ACT TO AMEND CERTAIN ITEMS IN REPUBLIC ACTS NUMBERED SIXTEEN HUNDRED THIRTEEN, NINETEEN HUNDRED, AND TWENTY HUNDRED NINETY-THREE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Item 101 on page 158, paragraph *g* of Section two of Republic Act Numbered Sixteen hundred thirteen is hereby amended to read as follows:

"101. Provincial Capitol Building, Iloilo ..... ₱30,000.00
"101*a*. For the construction of a Western Visayas Regional Mental Hospital in Iloilo ..... 300,000.00"

SEC. 2. Item 6 on page 515, under paragraph *g* of Section two of Republic Act Numbered Nineteen hundred is hereby amended to read as follows:

"6. Provincial Capitol Building ..... ₱30,000.00
"6*a*. For the construction of a Western Visayas Regional Mental Hospital in Iloilo 250,000.00
"6*b*. For the construction of a hospital in the Municipality of Buenavista, Iloilo ..... 50,000.00"

SEC. 3. Item 1 on page 454, under Title M. paragraph *g* of Section one of Republic Act Numbered Twenty hundred ninety-three is hereby amended to read as follows:

"1. Iloilo Provincial Capitol ..... ₱28,500.00
"1*a*. For the construction of a Western Visayas Regional Mental Hospital in Iloilo ..... 111,500.00"

SEC. 4. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 118

[REPUBLIC ACT No. 2931]

AN ACT TO GRANT MARIA D. TAN A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF TANGUB, PROVINCE OF MISAMIS OCCIDENTAL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to Maria D. Tan, for a period of twenty-five years from the approval of this Act, the right, privilege and authority to construct, maintain and operate an electric light, heat and power system for the purpose of generating and distributing electric light, heat and/or power for sale within the limits of the Municipality of Tangub, Province of Misamis Occidental.

SEC. 2. In the event that the grantee shall purchase and secure from the National Power Corporation electric heat and power, the National Power Corporation is hereby authorized to negotiate and transact for the benefit and in behalf of the public consumers with reference to rates.

SEC. 3. It is expressly provided that in the event the Government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender her franchise and will turn over to the Government all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 4. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 666

[REPUBLIC ACT No. 2932]

AN ACT GRANTING ROMARICO CRUZ A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN AN ICE PLANT AND COLD STORAGE IN THE MUNICIPALITY OF CAUAYAN, PROVINCE OF ISABELA, AND TO SELL ICE AND TO SUPPLY COLD STORAGE THEREIN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the conditions imposed by this Act, there is hereby granted to Romarico Cruz, herein-

after referred to as the grantee, a franchise to construct, operate and maintain an ice plant and cold storage in the Municipality of Cauayan, Province of Isabela, for the purpose of manufacturing and distributing ice and supplying cold storage therein and to charge and collect a schedule of prices and rates for the ice and cold storage so furnished, which schedule of prices and rates shall at all times be subject to regulation by the Public Service Commission or its legal successor.

SEC. 2. Said grantee shall manufacture and supply ice up to the limit of the capacity of his plant, said limit to be determined by the Public Service Commission or its legal successor in such certificate of convenience and public necessity as may be issued by it as prescribed by Section four of this Act.

SEC. 3. All the apparatus and appurtenances to be used by the grantee shall be modern, safe and first class in every respect, and the grantee shall, whenever the Public Service Commission or its legal successor shall determine that public interest reasonably requires it, change or alter any of the apparatus and appurtenances at his expense.

SEC. 4. The grantee shall not exercise any right or privileges under this franchise nor commence any construction thereunder, unless and until the grantee shall first file with the Public Service Commission within one hundred and twenty days from the date of approval of this Act:

(1) Its written acceptance of the terms and provisions of this Act;

(2) Its written acceptance of the terms and conditions of the certificate of convenience and public necessity required by law for the granting of this franchise and issued by the Public Service Commission of the form and character provided for in Commonwealth Act Numbered One hundred forty-six, as amended; and

(3) A document or documents evidencing receipt by the Treasurer of the Philippines of the deposit or deposits required by law for each certificate of convenience and public necessity as an earnest of good faith and guaranty that the grantee shall complete the work within the period to be fixed by the Commission.

If the grantee shall not commence the manufacture and distribution of ice and the supplying of cold storage in the places referred to in the certificate of convenience and public necessity obtained and filed as herein provided, within such period as the Public Service Commission or its legal successor shall have fixed, unless prevented by an act of God or *force majeure*, martial law, riot, civil commotion, usurpation by a military power or any other cause beyond the grantee's control, said Commission or its legal successor may in its discretion declare such certificate to be null and void, and the deposit or deposits made by the grantee forfeited in favor of the National Government.

SEC. 5. After grantee's compliance with the requirements of the next preceding section, the Public Service Commission or its legal successor, by proper order or writ, shall authorize the construction of necessary work for

the purposes of this franchise within a reasonable time to be determined by the said Commission.

Upon determination by the Public Service Commission or its legal successor after a hearing, upon reasonable written notice to the grantee, that the grantee has violated any of the provisions of this section as to the commencement and/or completion of work authorized by the certificate of convenience and public necessity, the said Commission or its legal successor shall declare the bond or bonds forfeited as liquidated damages and not as penalty to the National Government. The said Commission or its legal successor shall order the return of the deposit as aforestated, together with any interest or dividends thereon received by the Treasurer of the Philippines, to the grantee upon the satisfactory completion of any work authorized by its certificate of convenience and public necessity, in accordance with the terms and conditions of said certificate obtained, and the Treasurer of the Philippines shall return said deposit to the grantee together with said interest and/or dividends immediately upon presentation to him of a certified copy of such order of the Public Service Commission or its legal successor.

SEC. 6. This franchise is granted subject to the provisions of the Constitution and Commonwealth Act Numbered One hundred forty-six, as amended, and with the understanding and upon the condition that it shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when public interest so requires and that it shall be subject to the pertinent provisions of Act Numbered Fourteen hundred fifty-nine, as amended.

The Public Service Commission shall prescribe as a condition for the issuance of the certificate of convenience and public necessity to the grantee that the certificate shall be valid only for a definite period of time and that the violation of any of these conditions shall cause the immediate cancellation of the certificate without the necessity of any express action on the part of the Commission.

SEC. 7. The books, records and accounts of the grantee shall always be open to the inspection of the municipal treasurer or his authorized representatives, and it shall be the duty of the grantee to submit to the municipal treasurer quarterly reports in duplicate, showing the gross receipts for the quarter past, one of which shall be forwarded by the municipal treasurer to the Auditor-General, who shall keep the same on file.

SEC. 8. The grantee, with the approval of the Congress of the Philippines first had, may sell, lease, grant, convey, assign, give in usufruct, or transfer this franchise and all property and rights acquired thereunder to any individual, co-partnership, private, public or quasi-public association, corporation, or joint-stock company competent to operate the business hereby authorized, but transfer of title to the franchise or any right of ownership or interest acquired under such sale, lease, grant, conveyance, assignment, gift in usufruct, or transfer shall not be effective even after such approval shall have been obtained until there shall have been filed in the office of the Public Service Commission or its legal successor an agreement in writing by which the individual, co-part-

nership, private, public, or quasi-public association, corporation, or joint-stock company in whose favor such sale, lease, grant, conveyance, assignment, gift in usufruct, or transfer is made, shall be firmly bound to comply with all the terms and conditions imposed upon the grantee by this franchise and by any and all certificates of convenience and public necessity therefor issued by the Public Service Commission or its legal successor, and to accept the same subject to all existing terms and conditions.

SEC. 9. The Public Service Commission or its legal successor shall have the power, after a reasonable written notice to the grantee and a hearing of the interested parties, to declare the forfeiture of this franchise and all rights inherent in the same for failure on the part of the grantee to comply with any of the terms and conditions thereof, unless such failure shall have been directly and primarily caused by an act of God, *force majeure*, usurped rights, uprising or other cause beyond the grantee's control. Against such declaration of forfeiture by the Public Service Commission or its legal successor, the grantee may apply for the remedies provided in Sections thirty-four and thirty-six of Commonwealth Act Numbered One hundred forty-six, as amended. The remedy provided herein shall not be a bar to any other remedy provided by existing laws for the forfeiture of this franchise.

SEC. 10. In the event of any competing individual, association of persons, or corporations receiving from the Congress of the Philippines a similar franchise in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, association of persons, or corporation.

SEC. 11. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 1593

[REPUBLIC ACT NO. 2933]

AN ACT GRANTING ROSARIO C. PEDRANO A FRANCHISE TO INSTALL, OPERATE AND MAINTAIN A TELEPHONE SYSTEM IN THE MUNICIPALITY OF BOGO, PROVINCE OF CEBU, AND IN THE NEIGHBORING MUNICIPALITIES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the conditions established in this Act and the provisions of Commonwealth Act Numbered One hundred and forty-six, as amended, and of the Constitution, applicable thereto, there is hereby granted to Rosario C. Pedrano, hereinafter called the grantee, her successors or assigns, for a period of fifty years from the approval of this Act, the right and privilege to con-

struct, operate and maintain in the Municipality of Bogo, Province of Cebu, and in the neighboring municipalities, a telephone system to carry on the business of the electrical transmission of conversations and signals in the said municipality and in the neighboring municipalities. For this purpose, the grantee is hereby authorized to use all streets and public thoroughfares in the said municipality and in the neighboring municipalities for the construction, operation and maintenance of all apparatus, conductors, and appliances necessary for the electrical transmission of conversations and signals, to erect poles, string wires, build conduits, lay cables, and to construct, maintain, and use other approved and generally accepted means of electrical conduction in, on, over, or under the public roads, highways, lands, bridges, streets, lanes and sidewalks in said municipality and in the neighboring municipalities, and overhead or underground lines or on the surface of the ground as may be necessary and best adapted to said transmission.

SEC. 2. All poles erected and all conduits constructed or used by the grantee shall be located in places designated by the grantee: *Provided,* That all poles erected and used by the grantee, her successors or assigns, shall be of such appearance as not to disfigure the streets, and the wires and cables carried by said poles and the underground cables shall be strung and laid in accordance with professional standards approved by the Public Service Commission; and said poles shall be of such a height as to maintain the wires and cables stretched on the same at a height of at least fifteen feet above the level of the ground, and said wires and cables shall be so placed as not to imperil the public safety, in accordance with a plan approved by the Public Service Commission: *Provided, further,* That whenever twenty-five or more pairs of wires or other conductors are carried on one line of poles in the poblacion of the said municipality and/or in any poblacion of the neighboring municipalities, said wires or conductors shall be placed in one cable, and that whenever more than eight hundred pairs of wires or other conductors are carried on one line of poles, said wires or conductor shall be placed underground by the grantee, her successors or assigns, whenever ordered to do so by the Public Service Commission.

SEC. 3. For the purpose of erecting and placing the poles or other supports of such wires or other conductors or of laying and maintaining underground said wires, cables or other conductors, it shall be lawful for the grantee, her successors or assigns, to make excavations or lay conduits in any of the public places, highways, streets, alleys, lanes, avenues, sidewalks or bridges in the Municipality of Bogo, Province of Cebu, and in the neighboring municipalities: *Provided, however,* That any public place, highway, street, alley, lane, avenue, sidewalk or bridge disturbed, altered or changed by reason of the erection of poles or other supports, or the laying underground of wires or other conductors, or of conduits, shall be repaired and restored to the satisfaction of the district engineer of the province, and removing from the same all rubbish, dirt, refuse, or other material which may have been placed

there or taken up in the erection of said poles or the laying of said underground conduits, leaving them in as good condition as they were before the work was done.

SEC. 4. Whenever any person has obtained permission to use any of the streets in said municipality and in the neighboring municipalities for the purpose of removing any building or in the prosecution of any municipal work or for any other cause whatsoever, making it necessary to raise or remove any of said wires or conduits which may obstruct or hinder the prosecution of said work, the said grantee, upon notice of the municipal council of the said municipality or the municipal council of any of the neighboring municipalities concerned, served upon said grantee at least forty-eight hours in advance, shall raise or remove any of said wires or conduits which may hinder the prosecution of such work or obstruct the removal of said building, so as to allow the free and unobstructed passage of said building and the free and unobstructed prosecution of said work, and the person or entity at whose request the wires or poles or other structures have been removed, shall pay one-half of the actual cost of replacing the poles or raising the wires and other conductors or structures. The notice shall be in the form of a resolution duly adopted by the municipal council of said municipality and/or any of the neighboring municipalities and served upon the grantee or her duly authorized representative or agent by a person competent to testify as witness in a civil action, and in case of refusal or failure of the grantee to comply with such notice, the municipal mayor of the said municipality or the municipal mayor of any of the neighboring municipalities concerned, with the approval of the municipal council first had, shall order such wires or conduits to be raised or removed at the expense of the grantee, for the purposes aforesaid.

SEC. 5. All apparatus and appurtenances used by the grantee, her successors or assigns, shall be modern and first class in every respect and all telephone lines or installations used, operated and maintained in connection with this franchise by the grantee, her successors or assigns, shall be kept and operated and maintained at all times in a satisfactory manner, so as to render an efficient and adequate telephone service, and it shall be the further duty of said grantee, her successors or assigns, whenever required to do so by the Public Service Commission to modify, improve, and change such telephone system for the electrical transmission of conversations and signals by means of electricity in such manner and to such extent as the progress of science and improvements in the method of electrical transmission of conversations and signals by means of electricity may make reasonable and proper.

SEC. 6. The grantee, her successors or assigns, shall keep a separate account of the gross receipts of their telephone business, and shall furnish to the Auditor General and the Treasurer of the Philippines a copy of such account not later than the thirty-first day of July of each year for the twelve months preceding the first day of July.

SEC. 7. The grantee, her successors or assigns, shall be liable to pay the same taxes on their real estate, buildings, and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay. In addition, the grantee, her successors or assigns, shall pay to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in Section six of this Act, one *per centum* of all gross receipts of the telephone business transacted under this franchise by the grantee, her successors or assigns, and the said percentage shall be in lieu of all taxes on this franchise or its earnings.

SEC. 8. Within sixty days from the approval of this Act, the grantee shall file with the Public Service Commission her application for a certificate of public necessity and convenience. In case of failure to make said application within the period established, this franchise shall become null and void.

SEC. 9. The grantee shall not commence any construction whatever pursuant to this franchise without first obtaining a certificate of public necessity and convenience from the Public Service Commission of the form and character provided for in Commonwealth Act Numbered One hundred and forty-six, as amended, specifically authorizing such construction. The grantee shall not exercise any right or privilege under this franchise without first having obtained such certificate of public necessity and convenience from the Public Service Commission. The Public Service Commission shall have the power to issue such certificate of public necessity and convenience whenever it shall, after due hearing, determine that such construction or such exercise of the rights and privileges under this franchise is necessary and proper for the public convenience, and the Commission shall have the power in so approving to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interests may reasonably require, and such certificate shall state the date on which the grantee shall commence construction and the period within which the work shall be completed. In order to avail herself of the rights granted by such certificate of public necessity and convenience, the grantee shall file with the Public Service Commission, within such period as said Commission shall fix, her written acceptance of the terms and conditions of this franchise and of the certificate, together with the document evidencing the fact that the deposit required in Section ten of this Act has been made. In the event that the grantee shall not commence the telephone service referred to in the certificate obtained and filed as herein provided within such period as the Public Service Commission shall have fixed, said Commission may declare said certificate null and void and the deposit made pursuant to Section ten of this Act forfeited to the National Government unless the grantee shall have been prevented from doing so by fortuitous cause or *force majeure,* usurpation by military power, martial law, riot, uprising, or other inevitable cause: *Provided, however,* That if the grantee shall have been prevented by one or

more of all such causes from commencing the telephone service within the period specified, the time during which she shall have been so prevented shall be added to said period: *Provided, further,* That failure on the part of the grantee to accept the conditions of this franchise and those imposed in the certificate of public necessity and convenience shall automatically void this franchise.

SEC. 10. Upon the written acceptance of the terms and conditions of this franchise, the grantee shall deposit in the National Treasury one thousand pesos, or negotiable bonds of the Government of the Philippines or other securities approved by the Secretary of Public Works and Communications of the face value of one thousand pesos, as an earnest of good faith in accepting this franchise and a guaranty that, within six months from the date of the granting by the Public Service Commission of a certificate of public necessity and convenience authorizing the construction and operation by the grantee of a telephone service in the Municipality of Bogo, Province of Cebu, and in the neighboring municipalities, the grantee, her successors or assigns, will be completely provided with the necessary equipment and ready to begin operation in accordance with the terms of this franchise: *Provided,* That if the deposit is made in money the same shall be deposited at interest in some interest-paying bank approved by the Secretary of Public Works and Communications, and all interests accruing and due on such deposit shall be collected by the Treasurer of the Philippines and paid to the grantee, her successors or assigns, on demand: *And provided, further,* That if the deposit made to the Treasurer of the Philippines be negotiable bonds of the Government of the Philippines or other interest-bearing securities approved by the Secretary of Public Works and Communications, the interests on such bonds or securities shall be collected by the Treasurer of the Philippines and paid over to the grantee, her successors or assigns, on demand.

Should the said grantee, her successors or assigns, for any other cause than the act of God, the public enemy, usurpation by military power, martial law, riot, civil commotion, or inevitable cause, fail, refuse, or neglect to begin within twelve months from the date of the granting of said certificate of public necessity and convenience, the business of transmitting messages by telephone, or fail, refuse, or neglect to be fully equipped and ready to operate, within twelve months from the date of the granting of said certificate of public necessity and convenience, the telephone service in the Municipality of Bogo, Province of Cebu, and in the neighboring municipalities applied for by the grantee according to the terms of this franchise, then the deposit prescribed by this section to be made to the Treasurer of the Philippines, whether in money, bonds, or other securities, shall become the property of the National Government as liquidated damages caused to such Government by such failure, refusal, or neglect, and thereafter no interest on said bonds or other securities deposited shall be paid to the grantee, her successors or assigns. Should the said grantee, her successors or assigns, begin the business of transmitting

messages by telephone and be ready to operate according to the terms of this franchise, the telephone service in the Municipality of Bogo, Province of Cebu, and in the other neighboring municipalities, within twelve months from the date of the granting of said certificate of public necessity and convenience, then and in that event the deposit prescribed by this section shall be returned by the National Government to the grantee, her successors or assigns, upon recommendation of the Public Service Commission, as soon as the telephone service in said municipality and in the other neighboring municipalities applied for by the grantee has been installed according to the terms of this franchise: *Provided, further,* That all the time during which the grantee, her successors or assigns, may be prevented from carrying out the terms and conditions of this franchise by any of said causes shall be added to the time allowed by this franchise for compliance with its provisions.

SEC. 11. The books and accounts of the grantee, her successors or assigns, shall always be open to the inspection of the provincial auditor or his authorized representatives, and it shall be the duty of the grantee to submit to the Auditor General quarterly reports in duplicate showing the gross receipts and the net receipts for the quarter past and the general condition of the business.

SEC. 12. The rights herein granted shall not be exclusive, and the rights and powers to grant any corporation, association or person other than the grantee's franchise for the telephone or electrical transmission of messages or signals shall not be impaired or affected by the granting of this franchise: *Provided,* That the poles erected, wires strung or cables or conduits laid by virtue of any franchise for telephone, or other electrical transmission of messages and signals granted subsequent to this franchise shall be so placed as not to impair the efficient and effective transmission of conversations or signals under this franchise by means of poles erected, wires strung, or cables or conduits actually laid and in existence at the time of the granting of said subsequent franchise: *Provided, further,* That the Public Service Commission, after hearing both parties interested, may compel the grantee of this franchise or her successors or assigns, to remove, relocate, or replace her poles, wires, or conduits; but in such case the reasonable cost of the removal, relocation, or replacement shall be paid by the grantee of the subsequent franchise or its successors or assigns to the grantee of this franchise or her successors or assigns.

SEC. 13. The grantee, her successors or assigns, shall hold the national, provincial and municipal governments harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the telephone, or other electrical transmission system of the said grantee, her successors or assigns.

SEC. 14. The rates for the telephone service, flat rates as well as measured rates, shall be subject to the approval of the Public Service Commission.

The monthly rates for telephone having a metallic circuit within the limits of the poblacion of the said municipality or of the neighboring municipalities shall also be approved by the Public Service Commission.

SEC. 15. The grantee shall not, without the previous and explicit approval of the Congress of the Philippines, directly or indirectly, transfer, sell, or assign this franchise to any person, association, company, or corporation or other mercantile or legal entity.

SEC. 16. The grantee shall install, operate, maintain, purchase on lease such telephone stations, lines, cables or systems, as is, or are, convenient or essential to efficiently carry out the purpose of this franchise: *Provided, however,* That the grantee, her successors or assigns, shall not, without the permission of the Public Service Commission first had, install, operate, maintain, purchase or lease such stations, lines, cables or systems.

SEC. 17. The Philippine Government shall have the privilege, without compensation, of using the poles of the grantee to attach one ten-pin crossarm, and to install, operate and maintain wires of its telegraph system thereon: *Provided, however,* That the Bureau of Telecommunications shall have the right to place additional crossarms and wires on the poles of the grantee by paying a compensation, the rate of which is to be agreed upon by the Director of Telecommunications and the grantee: *Provided, further,* That in case of contract rental, same shall be fixed by the Public Service Commission. The Municipality of Bogo, Province of Cebu, and the neighboring municipalities shall also have the privilege, without compensation, of using the poles of the grantee, to attach one standard crossarm, and to install, operate and maintain wires of a local police and fire alarm system; but the wires of such telegraph lines, police or fire alarm system shall be placed and strung in such manner as to cause no interference with or damage to the wires of the telephone service of the grantee.

SEC. 18. It is expressly provided that in the event the Government should desire to operate and maintain for itself the system and enterprise herein authorized, the grantee shall surrender her franchise and turn over to the Government all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 19. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 1795

[REPUBLIC ACT No. 2934]

AN ACT GRANTING THE PACIFIC FARMS, INCORPORATED, A TEMPORARY PERMIT TO ESTABLISH, MAINTAIN AND OPERATE PRIVATE FIXED POINT-TO-POINT RADIOTELEPHONE STATIONS FOR THE TRANSMISSION AND RECEPTION OF WIRELESS MESSAGES TO AND FROM SAID STATIONS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The Pacific Farms, Incorporated, its successors or assigns, is hereby granted a temporary permit to establish, maintain and operate private fixed point-to-point radiotelephone stations in Bolinao, Pangasinan, and in other parts of the Philippines where it maintains or may hereafter maintain offices or establishments for the operation of its salts, fisheries and farm business, subject to the approval of the Secretary of Public Works and Communications, for the transmission and reception of wireless messages to and from said stations, including its vehicles and boats.

SEC. 2. The President of the Philippines shall have the power and authority to permit the construction, maintenance and operation of said private fixed point-to-point radiotelephone stations on any land of the public domain upon such terms as he may prescribe.

SEC. 3. The temporary permit granted under this Act shall continue to be in force while the Government has not established similar service at places hereinabove stated, and subject to the condition that the grantee, its successors or assigns, shall start operation under said permit within one and a half years from the date of the approval of this Act.

SEC. 4. The grantee shall file a bond in the amount of fifty thousand pesos to guarantee the full compliance and fulfillment of the conditions under which this temporary permit is granted. If after four years from the date of the approval of this Act the grantee shall have fulfilled said conditions, or as soon thereafter as the grantee shall have fulfilled the same, the bond aforesaid shall be cancelled by the government.

SEC. 5. The grantee, its successors or assigns, shall not engage in domestic business of telecommunications in the Philippines, it being understood that the temporary permit granted under this Act merely secures the right of the grantee to establish, maintain and operate private fixed point-to-point radiotelephone stations at the places hereinabove stated for no other purpose than to promote, protect, and subserve the interests of the grantee in the conduct of its salt, fisheries and farm business.

SEC. 6. The actual operation of said private fixed point-to-point radiotelephone stations shall not commence until after the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths to be used thereunder.

SEC. 7. The grantee, its successors or assigns, shall so construct and operate such stations as not to interfere with the operation of other radio stations maintained and operated in the Philippines.

SEC. 8. The grantee, its successors or assigns, shall hold the national, provincial, city and municipal governments of the Republic of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of its radiotelephone stations.

SEC. 9. The grantee, its successors or assigns, shall be subject to the corporation laws of the Philippines now existing or which may hereafter be enacted.

SEC. 10. The grantee shall not lease, transfer, grant the usufruca of, sell or assign this temporary permit nor the

rights and privileges acquired thereunder, to any person, firm, company, corporation or other commercial or legal entity nor merge with any other person, company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this temporary permit may be sold, transferred or assigned shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this temporary permit is sold, transferred or assigned shall be subject to all conditions, terms, restrictions and limitations of this temporary permit as fully and completely and to the same extent as if the temporary permit had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 11. A special right is hereby reserved to the President of the Philippines in time of war, rebellion, public peril, calamity, disaster or disturbance of peace and order to cause the closing of the grantee's radiotelephone stations or authorize the temporary use and operation thereof by any department of the Government upon payment of just compensation.

SEC. 12. The temporary permit granted under this Act shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires, and shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 13. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 1878

[REPUBLIC ACT No. 2935]

AN ACT GRANTING THE CENTRAL PHILIPPINES WIRECASTING SYSTEM THE RIGHT, PRIVILEGE AND AUTHORITY TO CONSTRUCT, INSTALL AND MAINTAIN A WIRECAST SYSTEM WITHIN THE PHILIPPINES, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the conditions established in this Act and the provisions of Act Numbered Thirty-one hundred and eight, as amended, there is hereby granted to the Central Philippines Wirecasting System, hereinafter known as the grantee, its successors or assigns, a corporation duly organized under the laws of the Philippines and domiciled in the City of Manila, for a period of fifty years from the approval of this Act, the right, privilege and authority to construct, install and maintain a wirecast system in the Philippines or in any province, city, municipality or municipal district thereof, for the purpose of transmitting, furnishing and disseminating musical and all other kinds of similar cultural and recreational information. For this purpose, the grantee shall likewise have the right and privilege to install, lay and maintain in, along, under and over all municipal, city, provincial or

national public or patrimonial property, including streets, highways, roads, thoroughfares, bridges and public squares within the Philippines, or in any province, city, municipality or municipal district thereof, all necessary apparatus, installations and appurtenances for the transmission, furnishing and dissemination of such musical and all other kinds of similar cultural and recreational information, and to supply, sell and furnish the same to any individual, co-partnership, private, public or quasi-public associations, corporations, or joint-stock companies, within the Philippines or in any province, city, municipality or municipal district thereof, for national, provincial, municipal or domestic, social, cultural or for any use to which said musical and other similar cultural or recreational information may be put, and to charge and collect a schedule of prices and rates as follows: a minimum of eight pesos and a maximum of twelve pesos per month per receiving set installed and serviced by the grantee for any person, co-partnership, private, public or quasi-public associations, corporations or joint-stock companies.

SEC. 2. The grantee is likewise hereby granted the right and privilege to erect poles, string wires, build or install pipes and conduits, lay cables, and to construct, maintain and use such generally accepted means of electrical conduction necessary for the exercise of the rights and privileges herein granted: *Provided, however,* That the above provision shall be without prejudice to the grantee's right to enter into negotiations with any individual, co-partnership, association or corporation which is operating any local or national electric light and power and/or telephone system in any province, city, municipality or municipal district for the right to use the poles or installations of such individual, co-partnership, association or corporation in the province or provinces, city or cities, municipality or municipalities or municipal district or districts where they are respectively operating.

SEC. 3. The grantee hereby agrees to compensate any and all municipalities, cities, municipal districts or provinces concerned, including the national government, for any damage to their property by reason of the construction or installation to be made by it in their respective territories under this franchise, or for any neglect or omission to keep its poles, cables, pipes or conduits or other installations in a proper or safe manner, and to be responsible for any damage to individuals, co-partnerships, private, public or quasi-public associations, corporations or joint-stock companies, arising out of such fault, neglect, or omission.

SEC. 4. All apparatus and appurtenances to be used by the grantee, its successors or assigns, shall be modern, safe, and first class and all wires shall be carefully connected, fastened and insulated. Any and all poles, cables, pipes or conduits shall be placed in such places designated by the respective municipal, city or provincial authorities concerned calculated as not to endanger public safety and convenience: *Provided,* That such designation shall be by

the Secretary of Public Works and Communications if the place be a national public or patrimonial property. The poles erected by the grantee shall be of such height as to maintain the wires stretched on the same at a distance of at least fifteen feet above the level of the ground, and shall be of such appearance as not to disfigure the streets and other public improvements, and shall be placed with due regard to the public safety.

SEC. 5. Whenever it shall become necessary in the erection of its poles to take up any portion of the side- or other materials which may have been placed, taken or of the public streets or thoroughfares, the grantee shall, after said poles shall have been erected, replace without delay said sidewalks and other property in a proper manner, removing from the same all rubbish, dirt, refuse, or other materials which may have been placed, taken or dug up thereon in and during the process of the erection of such poles, leaving all such sidewalks in as good condition as before the work was done.

SEC. 6. The grantee shall not commence any construction nor exercise the rights and privileges herein granted without first communicating its acceptance and conformity to the terms and conditions of this franchise to, and making a deposit in an amount of one thousand pesos in cash or in negotiable bonds approved by the Central Bank of the Philippines, with the Treasurer of the Philippines. The said deposit shall stand as earnest of good faith on the part of the grantee and as a guarantee that it shall commence operation in any city, municipality or municipal district in the Philippines in a substantial manner within a period of twelve months from the date of the approval of this Act, and the Treasurer of the Philippines shall invest the same in interest-earning securities: *Provided,* That if within a period of five years after the approval of this Act, the grantee shall not have commenced operation in any city, municipality or municipal district, then any person, association or corporation with a franchise to conduct a business similar to that of the grantee may operate and furnish to said city, municipality or municipal district the service offered by the grantee. Six months after the grantee shall have commenced operation in any one municipal district, municipality or city, the said deposit shall be returned to the grantee, together with whatever interests it had earned.

Should the grantee fail to communicate its acceptance of the terms and conditions of this franchise as provided in this section, within a period of one hundred and eighty days from the approval of this Act, then this franchise shall be deemed *ipso facto* abandoned and forfeited.

SEC. 7. In consideration of the franchise hereby granted, the grantee shall pay unto the respective municipal or city treasury in which it is operating, a tax equal to one-half of one per cent of the gross earnings it derives from its operations under this franchise in each of said municipality or city, for the first thirty years of operation, and for the remaining twenty years an amount equivalent to one *per centum* of its said gross earnings. Said tax

shall be due and payable quarterly and shall be in lieu of any and all taxes of any kind, nature, or description, levied, established or collected by any authority whatsoever, municipal, provincial, city or national, now or in the future, on its buildings, poles, wires, insulators, transformers and structures, installations, conductors, and accessories, placed in and over and under all public or private property, including public or private streets, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues and profits, for which taxes the grantee is hereby expressly exempted.

For purposes of the tax herein imposed, the grantee shall keep separate records and books of accounts for any and all income it derives from its operations in each municipal district, municipality and city, and such records and books of accounts shall be open for inspection by the Collector of Internal Revenue or his agents within a period of five years from their entry or dates of transaction. Such records and books of accounts shall be prepared in triplicate, the original of which shall be kept by the grantee, the duplicate to be forwarded to the Collector of Internal Revenue through the respective municipal or city treasurers concerned, and the triplicate to be forwarded to the Auditor General for audit and file purposes.

SEC. 8. The municipalities and/or cities concerned shall have the privilege, without compensation, for and during the time the wires of the grantee are maintained on its poles in their respective territories, of using the said poles of the grantee for the purpose of installing, maintaining and operating police telephone and fire-alarm systems, but the wires of such police telephone and fire-alarm systems shall be placed and stretched in such manner as to cause no interference with or damage to the wires of the grantee. The municipality or city which makes use of the aforesaid privilege shall be liable to the grantee for any damage or liability arising from the installation, maintenance and operation of said police telephone and fire-alarm systems.

SEC. 9. The grantee may sell, lease, grant, convey, assign, give in usufruct, or transfer this franchise and all property and rights acquired thereunder to any individual, co-partnership, corporation or joint-stock company competent to operate the business hereby authorized under the provisions of the Constitution, as well as under the provisions of Act Numbered Fourteen hundred and fifty-nine, as amended: *Provided, however,* That any such sale, lease, grant, conveyance, assignment, gift in usufruct, or transfer shall not be effective unless and until the vendee, lessee, grantee, assignee, donee or transferee shall have communicated his/its acceptance and made the deposit as provided in Section six of this Act, in which letter of acceptance of said vendee, lessee, grantee, assignee, donee or transferee sshall state that it shall be firmly bound to comply with all the terms and conditions imposed upon the grantee by this franchise.

SEC. 10. In the event of any competing individual, association of persons, or corporations receiving a franchise

or permission from the Government of the Philippines to conduct a similar business in all or any substantial portion of the territory covered by this franchise, to that of the grantee, in which franchise or permit there shall be any terms or conditions more favorable than those herein granted or tending to place the herein grantee at a disadvantage, then such terms or conditions shall *ipso facto* become part of this franchise and shall operate equally in favor of the grantee as in the case of said competing individual, association of persons, or corporations.

SEC. 11. At any time after thirty years from the date of approval of this Act or in cases of national emergency when the public safety so requires, in the event that the Government should desire to maintain and operate for itself any or all of the stations herein authorized, the grantee shall turn over such station or stations to the Government with all the serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 12. The grantee shall not require any previous censorship of speech, play, act or scene or other matter to be wirecast from its stations; but if any such speech, play, act or scene or other matter should constitute a violation of the law or infringement of private right, the grantee shall be free from any liability, civil or criminal, for such speech, play, act or scene or other matter: *Provided,* That the grantee, during any wirecast, may cut off the speech, play, act or scene or other matter being wirecast, if the tendency thereof is to propose and/or incite, treason, rebellion, or sedition, or the language used therein or the theme thereof is indecent or immoral.

SEC. 13. This franchise is granted with the understanding and upon the condition that it shall be subject to amendment, alteration, or repeal by Congress.

SEC. 14. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Justice

OFFICE OF THE SOLICITOR GENERAL

ADMINISTRATIVE ORDER No. 281

December 12, 1961

AUTHORIZING DISTRICT JUDGE FELIX ANTONIO OF ILOCOS SUR TO HOLD COURT IN MANILA.

In the interest of the administration of justice and pursuant to the provisions of Section 51 of Republic Act 296, as amended, the Honorable Felix Antonio, District Judge of Ilocos Sur, First Branch, is hereby authorized to hold court in Manila, to preside over the First Branch thereof, for a period of not more than three months beginning January 2, 1961, or as soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 282

December 9, 1961

AUTHORIZING ADMINISTRATIVE OFFICER JOSE P. PASCUAL OF THE DEPARTMENT OF JUSTICE TO SIGN AND APPROVE APPLICATIONS FOR VACATION OR SICK LEAVE EXCEPT LEAVE OF DIRECTORS AND ASSISTANT DIRECTORS OF BUREAUS, ETC.

In the interest of the public service and pursuant to the provisions of paragraph 1, Executive Order No. 324 of the President, dated February 11, 1941, and of section 615 of the Revised Administrative Code, Atty. Jose P. Pascual, Administrative Officer, Department of Justice, is hereby authorized to sign and approve applications for vacation and/or sick leave that may be granted in accordance with sections 284 and 285-A of the Administrative Code as amended by Commonwealth Act No. 220 and Republic Acts Nos. 218 and 2526, except application for vacation and/or sick leave of Directors and Assistant Directors of Bureaus, Judges of First Instance and Provincial and City Fis He will sign as follows:

"For the Secretary of Justice:

JOSE P. PASCUAL
Administrative Officer

ALEJO MABANAG
Secretary of Just

ADMINISTRATIVE ORDER No. 283

December 9, 19

DESIGNATING SPECIAL PROSECUTOR RENTINO FLOR OF THE DEPARTM OF JUSTICE TO ASSIST THE CITY AT NEY OF TACLOBAN CITY.

In the interest of the public service and purs to the provisions of Section 1686 of the Re Administrative Code, as amended, Mr. Flore Flor, Special Prosecutor in the Departmen Justice is hereby designated, effective immedi and to continue until further orders, to assis city Attorney of Tacloban City in the prosec of the case of Illegal Possession of Firearms ag Go Bun San *alias* Uy Teng Koc, which is pen trial before the Municipal Court of Tacloban and Mr. Flor directly accountable to the Secre of Justice and to the Chief Prosecuting Atto of this Department.

ALEJO MABANAG
Secretary of Just

ADMINISTRATIVE ORDER No. 284

December 13, 19

DESIGNATING SPECIAL PROSECUTOR NUEL VILLA-REAL JR., OF THE DEPA MENT OF JUSTICE TO ASSIST THE C FISCAL OF MANILA.

In the interest of the public service and purs to the provisions of Section 1686 of the Re Administrative Code, as amended, Mr. Manuel V Real Jr., Special Prosecutor in the Departmen Justice is hereby designated, effective immedi and to continue until further orders, to assist city Fiscal of Manila in the investigation and

f the criminal case against Mariano G. Al-
. for Estafa thru Falsification (I.S. No.
f the Office of the City Fiscal of Manila),
Villa-Real is administratively accountable
ecretary of Justice and to the Chief Pros-
Attorney of this Department.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 285

December 19, 1960

IZING DISTRICT JUDGE JUAN BO-
OF PALAWAN TO HOLD COURT IN
ILA FOR A CERTAIN PERIOD.

interest of the administration of justice
iant to the provisions of section 51 of Rep-
No. 296, as amended, the Honorable Juan
istrict Judge of Palawan, is hereby autho-
hold court in Manila, Fifth Branch, for a
f not more than three months beginning
3, 1961, or as soon thereafter as practicable,
purpose of trying all kinds of cases and
judgments therein.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 286

December 19, 1960

TING TEMPORARILY PROVINCIAL
AL JANUARIO A. LAGROSAS OF
AO DEL NORTE AS ACTING CITY AT-
NEY OF ILIGAN CITY.

interest of the public service and pursuant
rovisions of section 1679 of the Revised
rative Code, Mr. Januario A. Lagrosas,
l Fiscal of Lanao del Norte is hereby
ily appointed Acting City Attorney of
ity, effective December 13, 1960 and to
until the return of the regular incumbent
Manila on official business.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 287

December 20, 1960

ATING SPECIAL PROSECUTOR JESUS
BELEDA OF THE DEPARTMENT OF
TICE TO ASSIST THE PROVINCIAL
CAL OF LANAO DEL NORTE.

interest of the public service and pursuant
rovisions of section 1686 of the Revised
rative Code, as amended Mr. Jesus V.
Abeleda, Special Prosecutor in the Department of Justice is hereby designated, effective immediately and to continue until further orders, to assist the Provincial Fiscal of Lanao del Norte in the investigation and prosecution of the complaint filed by Salvador LI. Laya, et al. against Governor Ali Deimaporo, et al., and Mr. Abeleda is administratively accountable to the Secretary of Justice and to the Chief Prosecuting Attorney of this department.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 288

December 20, 1960

RESCINDING THE APPOINTMENTS OF VIVENCIO P. GUZMAN AND MANUEL S. ACOSTA AS SPECIAL COUNSELS IN THE PROVINCE OF ISABELA.

In the interest of the public service, the appointments extended to Attys. Vivencio P. Guzman and Manuel B. Acosta, Public Affairs Officer and Police Coordinator, respectively, in the Office of the Provincial Governor of Isabela as Special Counsels to assist the Provincial Fiscal of Isabela in the investigation and prosecution of criminal cases under Administrative Order No. 269, Series of 1960, are hereby rescinded.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 289

December 20, 1960

APPOINTING CAPT. MAXIMINO R. DIONISIO AS SPECIAL COUNSEL TO ASSIST TEMPORARILY THE PROVINCIAL FISCAL OF CAVITE.

Upon recommendation of the Secretary of National Defense, in the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, as amended, Capt Maximino R Dionisio, JAGS(PC) is hereby appointed Special Counsel, effective immediately and to continue until further orders, to temporarily assist the Provincial Fiscal of Cavite in the prosecution of Criminal Cases Nos. 12755–R; 12861–R; 12862–2; 12857–R; 12858–R and 12859–R entitled, "People *vs.* Leonardo Manecio, et al. before the Court of First Instance of Cavite, subject to the control and supervision of the said Provincial Fiscal.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 290

December 21, 1960

DESIGNATING SPECIAL PROSECUTOR LEONARDO B. CAÑARES TO ASSIST THE CITY FISCAL OF MANILA.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, as amended, Mr. Leonardo B. Cañares, Special Prosecutor in the Prosecution Division, this Department, is hereby designated, effective immediately and to continue until further orders, to assist the City Fiscal of Manila in the investigation and prosecution of criminal cases bearing I.S. Nos. 19597, 19600 and 22087 of the City Fiscal's Office of Manila, wherein Mr. Jose C. Reyes, owner of the Blu-Car Taxi is the complainant for estafa, and Mr. Cañares is administratively accountable to the Secretary of Justice and to the Chief Prosecuting Attorney of this Department.

ALEJO MABANAG
Secretary of Justice

Department of Commerce and Industry

FIBER INSPECTION SERVICE

FIBER INSPECTION ADMINISTRATIVE ORDER No. 5–13

March 15, 1961

AMENDMENT TO PARAGRAPH 8 OF FIBER INSPECTION ADMINISTRATIVE ORDER NO. 5.

1. Paragraph 8 of Fiber Inspection Administrative Order No. 5 is hereby further amended to include San Pablo City and Valenzuela, Bulacan designating initials of station to read as follows:

Province	Municipality	Initial
Laguna	City of San Pablo	SP
Bulacan	Valenzuela	VL

2. This Order shall take effect after publication in the Official Gazette.

PERFECTO E. LAGUIO
Acting Secretary
Department of Commerce and Industry

Recommended by:

VICENTE MITRA
Manager

HISTORICAL PAPERS AND DOCUMENTS

SPEECH OF PRESIDENT GARCIA AT THE COMMENCEMENT EXERCISES OF THE NATIONAL UNIVERSITY AND THE CONFERRING OF THE DEGREE OF DOCTOR OF HUMANITIES (HONORIS CAUSA), JOSE RIZAL MEMORIAL STADIUM, TUESDAY AFTERNOON, MARCH 21, 1961

I WELCOME the opportunity to address the faculty and the student body of this great institution of learning on this momentous occasion. At the outset, allow me to extend my warmest congratulations to the earnest and ambitious young men and women who have reached their goals and have just been awarded their diplomas as symbols of academic success. I need not tell you what difficulties and obstacles you had to overcome. Suffice it to say that this is your hour of triumph, of fruition, of fullfillment. It is, indeed, one of the happiest moments of your lives. And so I am glad to be with you and to join you in your rejoicing. I wish you Godspeed as you leave the familiar halls of your alma mater and go out into the cold, calculating world to face the future, with its challenges, its promises, and its stark realities.

For my part, I deeply appreciate the distinction that has been accorded me by the authorities of the National University in conferring upon me the degree of Doctor of Humanities, *honoris causa*. I consider this gesture as a token of recognition by the National University of whatever I have done for the promotion of the welfare and happiness of our people. Such recognition will spur me to still greater endeavors in their behalf. In acknowledging this signal honor, I pledge myself to dedicate the remaining years of my life to the service of humanity and our people and to furtherance of better understanding and closer relations between our people and the other nations of the world.

As we look at ourselves in self-examination, we cannot fail to see the unmistakable signs of a growing trend toward materialism. Stealthily, like a thief in the dead of night, its influence seems to be creeping into the minds of our people, blurring their sense of social values and otherwise affecting their outlook on life. And so today we find a man's worth being frequently gauged, not on the basis of the kind of life he leads nor on the contribution he makes to social well-being and progress, but on the basis of the size of his holdings or the number of digits in the credit balance column of his bank book. Coupled with this trend is the pragmatic way of thinking which, more often than not, leads to opportunism and expediency in one's decisions and actions.

The impact of this trend upon the impressionable minds of the youth is almost certain to lead to the whetting of their desire for the material things of life—money, possessions, and the power that goes with wealth and social position. Kept within proper limits, such desire and ambition are legitimate and may even be socially beneficial. But if it is allowed to develop into an obsession, it may become so strong that the end may be made to justify the means, with the result that the individual may be tempted to go beyond the bounds of morality and even to break the law in order to get what he wants. This is one of the sources of anomalies, graft, and corruption—evils that today are afflicting our social organism like a malignant cancer.

This condition must not be allowed to continue. We must revise our concept and appreciation of moral values. In casting about for principles to live by and to guide and sustain our actions, we have to understand deeper the eternal cosmic laws of life; for instance, the inevitability of retribution for every wrong one does, known or unknown; the certainty of reward for every good or righteous action, known or unknown; the infallibility of the law of cause and effect and the like. We need to go back to the old concepts of honesty, family solidarity, clean and righteous living, respect for authority, and the other traits which have been the objects of encomium by the chroniclers of the early days of our history. It is unfortunate that the ravages of time appear to have weakened these traits. Therefore, something should be done to strengthen them and to return them to their pristine state. In the process of interaction between our native culture and the culture of other people, we must be careful not to give up what is ours and embrace what is foreign merely because the latter bears the label of modernity. We should keep in mind the advice of St. Paul to the Thessalonians: "Test all things; hold fast that which is good."

Extending our view to the world outside, we find that prejudices of one kind or another still color and warp the thinking of many people in different parts of the globe. Then, too, misunderstandings, mistrust, and suspicions still exist and impair the friendly relations that should prevail among nations. Two opposing ideologies, each one espoused by the strongest nations of the world, are engaged in a titanic struggle to win the minds of men. As a result of these conditions, tensions prevail among peoples. Even today, in faraway Africa, as well as in Southeast Asia, there are powder kegs which are capable of exploding any day; and of throwing the whole world into a mighty conflagration, the like of which has not been witnessed in the long history of mankind.

It is true that man has made giant strides in the fields of science and technology. We stand in wonderment as we ponder how man has been able to harness the forces of nature to his higher purposes. We admire the strong bridges he has constructed to span rivers and even seas and the sturdy ships he has built for crossing the wide expanse of oceans. We marvel at the powerful locomotives that have made land travel rapid and easy. We are fascinated by the airplane, and by inventions which will soon bring to reality inter-planetary navigation. We are awed by his determined efforts to probe into and conquer outer space. We are amazed by the speed with which mass communication has been made possible through the invention of the modern printing press, the radio, and the television. We stand aghast at the tremendous energy and power that have been released through the splitting of the atom—energy and power which can be used either to wipe out continents or to serve man's needs in medicine, agriculture, and industry. Yet the envisioned golden age of science still to come will dwarf all these wonders I have just mentioned.

But I doubt whether these advances have made our world a happier and peaceful place to live in. One thing I am sure is that they have not been matched by similar progress in the area of human virtues. Material progress has not stopped man's cupidity, greed, and hatred. It has not put an end to "man's inhumanity to man." Envy is still as strong as it was in the days of Abraham, whose son tried to kill their youngest brother, Joseph, by throwing him into a cistern. In other words, little, if any, progress has been made in attaining social solidarity of the world envisaged in the sacrament of the Eucharist or the brotherhood of humanity preached in the Sermon on the Mount.

Neither has there been enough success in the fields of international relations. The concept of world brotherhood is still a dream, and its realization still belongs to a future millenium. It is true that through the United Nations Organization it has been possible to localize conflicts, as in the case of the hostilities in Korea and the Middle East and other places. In fact, the astronomical rise in might achieved by some countries owing to advances in science and technology, may lead the world to a cataclysmic war that may sink it into another Atlantis of Annihilation. Hence, the necessity of moral and spiritual elevation especially in the modern leadership of nations.

So it is of the essence that the universities, like the National University, give the highest premium to the moral education of our youth. Evaluation of men for leadership should place maximum weight to moral qualities and spiritual fortitude, never forgetting that it takes only one mad man with tremendous powers of leadership to destroy the

world. There has been developed so much physical power available to the use of men that the salvation of humanity would require as a *sine qua non* an equal development of moral and spiritual power.

In our desire to reshape the thinking and ideals of our people, we have to lean heavily on our schools, for they have under their care and tutelage the youth, whose ideas are still in the formative stage. These institutions should take it upon themselves to imbue their students with the ideals of world peace and a proper regard for their fellowmen. They should inculcate in them the ideals of honesty and righteous living as well as the readiness and desire to comply with their obligations as good citizens of our Republic. As a matter of fact, their first duty, according to our Constitution, is to develop good moral character. The teaching of the different subjects, like science, mathematics, English, the social studies, and so forth is merely taken for granted. In my recent message to Congress on the state of the nation, I urged the strengthening of the social values through the intensification of character education as a separate subject in the curricula of the public and the private schools.

I also consider this intensification of character education important and even necessary in connection with my administration's relentless drive against graft and corruption. feel quite strongly that positive measures through education must go hand in hand with punitive or remedial efforts in cleaning the government. Through education we can reorient the social views of our youth so that in the case of corruption the giver of the bribe should be equally condemned by society as the receiver of bribe. Now the tempter is idolized and only the tempted is punished and ostracized. Just the same we are seriously pushing through our punitive or remedial campaign. A total of more than 20,000 administrative cases have been filed against officials and employees of the government, and more than 9,000 of these have been convicted and punished. But this campaign will not achieve enduring beneficial results unless accompanied by positive measures through educational process.

In the effort to help in the regeneration and strengthening of the moral fiber of our people, the schools would do well to avail themselves of the approved methods that are known in the field of character education. Direct appeal in the form of exhortation is good, but we must not lose sight of the value of the more subtle approaches. In this connection, we should not underestimate the importance of literature as a means of influencing the minds of people. The movie, the radio, and the television should be extensively used in the total spiritual mobilization. The pages of

history are replete with examples of how the writings of literary men and women have led to significant movements and events in the life of nations. The French Revolution had its Voltaire and Rosseau; knight-errantry in Spain, its Cervantes, slavery in America its Harriet Beecher Stowe. In the Philippines we had our own Rizal, Plaridel, Mabini, and Jaena, whose writings have galvanized our national consciousness and unified the sentiments of our people. Indeed, so strong is the power of the pen that Bulwer-Lytton was moved to state that it is mightier than the sword.

In conclusion, let me stress the point that our country is today facing the problem of bringing about the moral and spiritual regeneration of our society. The last war has wrought havoc, not only on the buildings in our cities, not only on our economy, but also on the morals of our people. It we are to survive as a race, our people must be restored to their ancient moorings which have enabled them for centuries to weather the storms of life. In this task our institutions of learning have a vital role to play. It is my hope that the National University with the rest play this role with credit to themselves and glory to their country.

PRESIDENT GARCIA'S SPEECH AT THE OPENING OF THE 52ND ANNUAL CONVENTION OF THE PHILIPPINE ASSOCIATION OF SCHOOL SUPERINTENDENTS AT THE QUEZON-ROOSEVELT MEMORIAL HALL, TEACHERS' CAMP, BAGUIO CITY, AT 10:00 A.M., TUESDAY, APRIL 4, 1961

LADIES AND GENTLEMEN:

FOR a number of years now I have appeared at your conventions, and this fact alone, I believe, should qualify me for membership in your select and exclusive organization—the Philippine Association of School Superintendent (PASS). I would of course be equally as happy if I could also be a member of its sister organization—the Philippine Public School Teachers Association (PPSTA). After all, I was once a teacher in the public schools like you, and had I stayed in the service who knows but that you would have a man other than Secretary Romero—even if he was once a teacher himself—at the head of the Department of Education today.

But levity aside, my friends, I am happy to be with you this pleasant morning, and I am sure that the First Lady fully shares this sentiment of mine. I shall look forward keenly and deeply to renewing my acquaintance with every one of you. Or perhaps—to employ a semantic tone familiar familiar to superintendents—I shall not only renew the acquaintance but endeavor, now and in the days ahead, to strengthen it further.

This brings me forthwith, I suppose, to the theme of your convention this year: "Further Strengthening Public Education to Promote the Socio-Economic Progress of the Philippines." The theme interests especially where it touches on the matter of social economics. For this is one subject, among others, that has become to me a kind of magnificient obsession if only because, as I said in my state-of-the-nation address to the Congress last January, our country has achieved so much progress of late in the field of economics, as well as in other fields, as to brighten and hasten the steps it must inevitably take in its unending Odyssey toward its sublime Destiny.

Indeed, what we have accomplished to improve the national economy, particularly in further stabilizing and enhancing our fiscal position and in further strengthening and solidifying the Philippine peso, what we have done to develop agriculture, industry, and trade, let alone what we have accomplished in education, social welfare, and community development, constitute significant if not stirring strides in the fast evolving pattern of our society and cannot but be proofs incontestable that progress is our law today. And this law of progressive development, which is the greatest of all laws, we must continue to pursue if we are to find the assurance for a better and happier tomorrow.

But to return to your convention and your theme. I understand that in the study of this theme you have agreed on at least eight areas; namely, human relations, economic security, moral and spiritual life, civic participation, recreational activities, health and physical development, creative-aesthetic life, and mental and intellectual development. In other words, you will approach it from all possible angles and bring to bear upon it the many-sided resources of your mind and heart. This is, of course, as it should be. For the progress that we most desire can come only from the enlistment of all the faculties, and is the aggregate result of countless wills and endless efforts. It is a composite of many developments, or to paraphrase Ruskin, the expression of the cumulative art of mankind.

And so, while we devoutly wish to attain economic progress—while we believe in the urgency, for instance, of promoting in the most vigorous manner possible the growth of our nation's economy, exploiting the riches of our natural wealth and increasing production to a self-sufficient level to meet the needs of our growing population—we cannot overlook the other values that, in their totality or integrity, will give substance and strength, direction and distinction, to the affairs of our life. There are, to start with, the physical values—sound body, strength, health—without which, as Rabelais said, life is not life. There are the intellectual values without which we cannot acquire a passion for learning and become men and women of thought who can proceed to answer human questions and human ends. There are the moral or spiritual values without which, in the emotionally complex world of today, a man of mere physique or of mere intellect would be very much lost. "When we have the lantern of Diogenes, we must have his staff."

This fact of integrity of values is the very ideal that I have espoused on more than one occasion. Thus I have often said that, whereas the man of today can have almost everything material—money, possessions, social position, and the power and prestige that go with them—he cannot on that account be said to have acquired a moral elevation which can sustain itself against all worldly assaults, or that, whereas man have made giant strides in the fields of science and technology and can easily perceive that these surpass the old miracles of mythology, it does not necessarily follow that he thereby matches that knowledge, that advancement, by similar progress in the area of human morals and virtues.

Now this principle of unity can be applied to all other spheres of human activity—to the business of government, for example. Every year the executive department submits its budget proposals, sometimes in "astronomic" figures and often with such statement of justification as to give the im-

pression that, unless the proposals were granted, the entire fabric and framework of government might follow the way to disruption and decay. But governments have no Aladdin's magic lamp and ring, so to speak, and must perforce get their support from taxes—which Cicero, by the way, called "the sinews of the state." And so what is there for us who are in the government service left to do? We regard the government as the continuing concern that it is, consider all phases of its activity, and accord to every phase what appropriations could be made available therefor, considering the fundamental principle of the greatest good for the greatest number.

If I have mentioned these things, it is to underscore the fact once again that, particularly in reference to education, our people have every reason to be proud of what the government has done and is doing. I recall having told you when you called on me at Malacañang last February that the government appropriates nearly or approximately one-third of the national income for purposes of education alone—the figures for the last two fiscal years (1959–1960 and 1960–1961) for the Department of Education being ₱247,386,570 and ₱306,879,520, respectively. For the ensuing fiscal year the Department has been allotted in the Appropriations Act now being discussed in Congress the sum of ₱352,057,370—the biggest share for any department of the government. Of this amount ₱349,338,040—or only about ₱2.5 millions less— will go to the Bureau of Public Schools.

This tremendous investment on education has given rise to the vital question of whether the government can continue to give priority to the Department of Education. As far as my administration is concerned there is no doubt that I shall continue to be the chief exponent of spending more, if it needs be, for the education of all our people. It is is about time to realize the fact that although we are already spending roughly one-third of our income for education, the highest in the world today percentagewise, we must be prepared to meet due responsibilities inherent to our desire of strengthening our educational system to promote socio-economic progress of the Philippines. In a democracy like ours where the dignity of man is central, education is of uppermost importance. In a democracy which can only succeed with an educated citizenry, the fullest and most continuous education of the masses becomes a political necessity. To achieve economic growth, the development and utilization of the capacities of our people to the fullest degree is vital. The greatest limitations upon the expansion of our economy are deficiencies and lacks in the skills of manpower. Hence, the way to expand prosperity and attain optimum economic growth is by building up a larger reserve of manpower with higher

skill and competence. I submit that a renewal of faith in the infinite value and unlimited possibilities of individual development which can be attained only through and by education is imperative.

Based upon the above important premises, I establish the thesis that in terms of our national future, the state function of transcendental importance to us is the education of our people, physically, mentally, and morally.

If education is the all-important task of our Republic, what can be done to strengthen our educational system to make it a potent instrument of national policy?

To answer that big question is what you came here for. I do not expect you in the course of a few days' convention to be able to answer the question fully and thoroughly. But, be that as it may, let me throw into your deliberations a few questions on matters to which your study should be focussed.

These are

1. Adult Education:

   (*a*) Are we doing enough for educating our adult at best to enable them to read and write? Statistics hereon are not encouraging.

   (*b*) Have we given enough attention to the kind of education outside the formal system? We have apprenticeship in industries, in-service training, correspondence schools, fashion schools, army training schools, and others. But have we developed plans to make full use of this informal way of educating our adults in the rural areas so as to afford the adults the opportunity to grow continuously in learning fitness and utility?

2. Higher Education:

   (*a*) Should not the private colleges and universities and educational institutions, which absorb 80 per cent of our students on collegiate level, be given incentives by government in the establishment of laboratories and research work for stimulating education in sciences and arts?

   (*b*) Are we giving enough asistance, incentive, and special encouragements to young talents in the form, for instance, of scholarship grants, pensionadoship?

   (*c*) Do private institutions have organizations whose task is to get endowments, gifts, trust funds, etc., to support effectively the raising of the standards of these private institution?

3. Private Education:

   (*a*) Should the immediate control and supervision of private educational institutions subject to the high authority of the Secretary of Education be vested in a commission, council or board of regents of private education to be composed of immenent educators recommended for appointment by these private colleges and universities themselves?

   (*b*) Should the government open up a lending program to deserving and qualified private educational institutions, in very low rates of interest to help them expand or improve their standard in building, curriculum, and social utility?

(c) Should the government open up a lending program at the lowest rate of interest to deserving and promising students?

4. Educational Aids:

(a) Are we evolving a comprehensive plan to utilize the radio, the television, the tape recorder machine, and other new or self-teaching devices to improve our standard of instruction or to effect a massive adult education of our masses? This is a matter worthy of careful consideration.

These are only a few thought-provoking questions relative to the strengthening, expansion, and elevation of our educational system. There are dozens of others which the educators may collate into their discussion. But for all these objectives, the paramount question is that of finances. We have a finance bill pending consideration in Congress, but this is only a beginning of our school financing system. It should continuously be improved and expanded to meet exigencies of a fast developing nation, and this nation should be attuned and organized to attain its high educational objectives.

We Filipinos want to have the best, the most modern, and the most progressive educational system in Asia. We are willing to pay the price. Let us organize ourselves for action.

DECISIONS OF THE SUPREME COURT

[No. L-12322. 19 February 1960]

JOSÉ G. GENEROSO, as executor of the testate estate of the deceased FAUSTINO AGUILAR, and EMILIA WARREN AGUILAR, plaintiffs and appellants, *vs.* GOVERNMENT SERVICE INSURANCE SYSTEM, defendant and appellee.

1. RETIREMENT; COMMONWEALTH ACT 186; WHO ARE GRANTED THE BENEFITS.—The decedent FA, his widow or his legal heirs are not entitled to the benefit granted or provided for in the first paragraph of Section 30, Commonwealth Act No. 186, as amended by Republic Acts Nos. 660, 728, and 1123 because FA died on 24 July 1955 long after the basic law, Republic Act No. 660 took effect. The benefits are granted to those who died in the service within three years before the act went into effect.

2. ID.; ID.; POSITION NOT ABOLISHED NOR SEPARATED DUE TO REORGANIZATION.—Neither is the decedent FA entitled under the second paragraph of Section 30 of Commonwealth Act No. 186, because his office or position was not abolished nor was he separated from the service as a consequence of a reorganization, he having voluntarily retired upon his petition under Act No. 2589 while holding the position of technical adviser in the office of the President.

APPEAL from a judgment of the Court of First Instance of Rizal (Pasig). Enríquez, *J.*

The facts are stated in the opinion of the Court.

Federico Agrava for the plaintiffs and appellants.

First Assistant Government Corporate Counsel Simeón M. Gopengco and *Attorney Romualdo Valera* for the defendant and appellee.

PADILLA, *J.:*

This is an appeal from a judgment rendered by the Court of First Instance of Rizal dismissing the plaintiffs' complaint in civil case No. 3852. In their notice of appeal to this Court, the appellants state "that they intend to raise on appeal only questions of law."

The findings of the trial court are:

* * * Faustino Aguilar entered Government service on July 7, 1913 as a clerk in the Philippine Assembly. Thereafter, he served continuously in various government positions. On July 1, 1947, Aguilar was appointed Manager of the Rural Progress Administration and he remained in that position until October 10, 1949 when he was appointed Technical Adviser in the Office of His Excellency, The President. On October 7, 1950, while still serving as a technical adviser in the Office of the President, Aguilar was retired upon his application under Act No. 2589 (Osmeña Act), and he was paid a gratuity of ₱12,000 thereunder. On the date of his retirement, Aguilar was 69 years, 7 months and 23 days old, and he

had 36 years, 11 months and 29 days of government service to his credit (Exh. B). On July 15, 1951 (should be June 16), Republic Act No. 660 was enacted; and he filed a claim for retirement under Section 26 thereof with the Government Service Insurance System which entity made a final rejection of his claim after the claimant had already died. * * *.

Paragraphs 1 and 2, section 30, Commonwealth Act No. 186, as amended by Republic Act No. 660, which amendment took effect on 16 June 1951, provide:

Notwithstanding the provisions of this Act to the contrary, any officer or employee who died in the service within three years before said Act went into effect and who had rendered at least thirty-five years of service and who was entitled to or who could have established his right to the retirement gratuity provided for in Act Numbered Twenty-five hundred and eighty-nine, as amended, or to any other retirement benefits from any pension fund created by law shall be considered retired under the provisions of this Act if his wife, or in her default, his other legal heirs shall so elect and notify the System to that effect. Upon making such election, the wife or legal heirs of the deceased officer or employee shall be paid the monthly annuity for five consecutive years or such other benefits as provided in said Act, in lieu of the retirement gratuity or retirement benefits to which the deceased was entitled at the time of his death; and any portion of such gratuity or retirement benefits already paid to his wife or other legal heirs shall be refunded to the System: *Provided*, That contributions corresponding to his last five years of service shall be deducted monthly from his life annuity.

Notwithstanding any provisions of this Act to the contrary, any officer or employee whose position was abolished or who was separated from the service as a consequence of the reorganization provided for in Republic Acts Numbered Four hundred and twenty-two may be retired under the provisions of this Act if qualified: *Provided*, That any gratuity or retirement benefit already received by him shall be refunded to the System: *Provided, further*, That contributions corresponding to his last five years of service shall be paid as provided in section twelve of this Act. This provision shall also apply to any member of the judiciary who, prior to the approval of this Act, was separated from the service after reaching seventy years of age and rendering at least thirty years of service and who is not entitled to retirement benefit under any law.[1]

The decedent Faustino Aguilar, his widow, or his legal heirs are not entitled to the benefits granted or provided for in the first paragraph of section 30, Commonwealth Act No. 186, as amended by Republic Acts Nos. 660, 728 and 1123, because Faustino Aguilar died on 24 July 1955 long after the basic law, Commonwealth Act No. 186, and the first amendatory law, Republic Act No. 660, took effect. The benefits are granted to those who died in the service within three years before the Act went into effect.

[1] Further amended by Republic Acts Nos. 728, which took effect on 18 June 1952, and 1123, which took effect on 16 June 1954. However the amendments are not decisive of the issues raised in this appeal.

Neither is the decedent Faustino Aguilar entitled under the second paragraph of the above quoted provisions of law, because his office or position was not abolished nor was he separated from the service as a consequence of a reorganization referred to therein, he having voluntarily retired upon his petition on 7 October 1950 under Act No. 2589, while holding the position of technical adviser in the office of the President.

When on 6 January 1950, Republic Act No. 422, authorizing the President to reorganize within one year the different executive departments, etc., including corporations owned or controlled by the Government, was enacted, and when on 28 November 1950, Executive Order No. 376 was promulgated by the President, abolishing the Rural Progress Administration and transferring its functions to the Bureau of Lands, the late Faustino Aguilar already had left voluntarily the service of the Rural Progress Administration to accept the office or position of Technical Adviser to the President. Hence, his position was neither abolished nor was he separated from the service as a consequence of the reorganization of the Government as authorized and provided for in Republic Act No. 422.

The judgment appealed from is affirmed, with costs against the appellants.

Parás, C. J., Bengzon, Montemayor, Bautista Angelo, and *Gutiérrez David, JJ.,* concur.

Judgment affirmed.

[No. L-12357. 29 December 1959]

NATIONAL MARKETING CORPORATION, plaintiff and appellee, *vs.* JOSÉ G. DE CASTRO, defendant and appellant.

1. TRIAL; PARTIES ALLOWED TO ENTER A COMPROMISE AGREEMENT; JUDGMENT BASED ON PLAINTIFF'S EVIDENCE; WHEN PARTY IS NOT DEEMED DEPRIVED OF HIS DAY IN COURT.—Where it appears that the Court, in its order, considered the case submitted for decision on plaintiff's evidence upon failure of defendant to appear for trial; that upon motion of defendant to set aside said order on the ground that he was trying to settle the case amicably with plaintiff, the Court gave defendant a period of twenty days to inform it of the status of his alleged negotiation with the plaintiff for amicable settlement; that the Court gave both parties every opportunity to settle the case amicably, giving defendant another twenty days for that purpose; that in view of the fact that the case had been dragging on for an unreasonable period of time and because defendant's motion to extend the period within which to submit a compromise agreement did not bear the consent of plaintiff, the Court denied said motion and considered the case submitted for decision upon plaintiff's evidence, it cannot be said that defendant had been deprived of his day in court.
2. PLEADING AND PRACTICE; ANSWER; ENUMERATION OF COMPLAINTS' PARAGRAPH NUMBERS; NOT SUFFICIENT DENIAL.—Defendant's allegation in his answer that "he has no knowledge or information sufficient to form a belief as to the truth of the matters contained in paragraphs 3, 4, 5 and 6 so much so that he denies specifically said allegations", does not constitute specific denial. A denial is not specific simply because it is so qualified (Sections 6 and 7, Rule 9; El Hogar Filipino *vs.* Santos Investments, Inc., 74 Phil. 79; Bactamo *vs.* Amador, 74 Phil. 735; Dacanay *vs.* Lucero, 76 Phil. 139; Lagrimas *vs.* Lagrimas, G. R. No. L-6462, 28 May 1954).
3. ID.; ID.; FAILURE TO DENY SPECIFIC AVERMENTS; JUDGMENT UPON THE PLEADINGS.—Material averments in a complaint, other than those as to the amount of damage, are deemed admitted when not specifically denied (Section 8, Rule 9). The court may render judgment upon the pleadings if material averments in the complaint are admitted (Section 10, Rule 35; Bactamo *vs.* Amador 74 Phil. 735; Lichauco *vs.* Guash, 76 Phil. 5; Lati *vs.* Valmores, G. R. No. L-6377, 30 March 1954).

APPEAL from a judgment of the Court of First Instance of Manila. Soriano, *J.*

The facts are stated in the opinion of the Court.

Adolfo N. Feliciano and *Simeón I. Raya* for the plaintiff and appellee.

Agustín C. García for the defendant and appellant.

PADILLA, *J.*:

José G. de Castro appeals from a judgment of the Court of First Instance of Manila ordering him to pay the plaintiff the sum "of ₱30,547.71, with legal interest thereon from the filing of the complaint until fully paid, plus 10% of the total amount due as attorney's fees and costs of collection, and the costs." (Civil No. 27545.) In his notice of appeal, he states that he "appeals from

the decision rendered on January 2, 1957, a copy of which was received on January 11 of the same year, to the Hon. Supreme Court of the Philippines as the issues involved herein are purely questions of law * * *."

The facts, as found by the trial court, are:

* * * That sometime on June 7, 1949, the defendant bought from the PRATRA, plaintiff's predecessor-in-interest, two International Model TD–18 Tractors with dozer, serial Nos. 6928 and 5642, for the total sum of ₱38,000.00; that plaintiff's evidence in support of this transaction consists of a copy of a letter (Exhibit B), dated June 8, 1949, of the General Manager of the PRATRA, authorizing E. S. Baltao & Company to deliver to defendant the aforesaid tractors; that defendant made a down payment of ₱15,200.00 on the said purchase, thereby leaving a balance of ₱22,800.00; that to secure payment of this latter amount, defendant executed a promissory note, dated June 7, 1949, for the said amount of ₱22,800.00 (Exhibit C); that as defendant failed to comply with the terms and conditions of the said promissory note, plaintiff's predecessor-in-interest sent to defendant demand letters dated May 2, 1953, June 14, 1954 and February 12, 1955 (Exhibits D, D–2 and D–4, respectively); that defendant's wife, Miguela B. de Castro, answered the said letters on May 15, 1953, June 25, 1954 and July 18, 1955 (Exhibits D–1, D–3 and D–5); that in the exhibits just mentioned, said defendant's indebtedness is admitted and extensions of time were asked therein to pay the same on the ground of alleged financial reverses; that as of July 11, 1956, the principal of defendant's indebtedness was ₱22,800.00 and the stipulated interest thereon was ₱11,227.71 or a total of ₱34,027.71; that of the said amount, defendant has only paid ₱3,480.00, which was applied to the payment of interest, thus leaving an outstanding balance in the amount of ₱30,547.71 as of July 11, 1956 (Exhibit A), and that under the promissory note, Exhibit C, in case of default in the payment of the said principal and interest, defendant shall pay to plaintiff the additional sum of 10% of the total amount due as attorney's fees and costs of collection.

After plaintiff presented its evidence above summarized on July 11, 1956, it rested its case, and this Court re-set the continuation of the trial on August 10, 1956 to afford the defendant an opportunity to present his evidence. On this latter date, defendant failed to appear when the case was called for trial, so this Court considered the case submitted for decision on plaintiff's evidence. However, on subsequent motion of counsel for defendant to set aside the said order of this Court, on the ground that he is trying to settle this case amicably with plaintiff, which motion was opposed by counsel for plaintiff, this Court, on August 27, 1956, gave defendant a period of twenty days from notice to inform this Court of the status of his alleged negotiation with plaintiff for the amicable settlement of this case, failing which this Court will consider the case submitted for decision on plaintiff's evidence. On September 17, 1956, counsel for defendant filed a manifestation that the said negotiation was still going on. On October 22, 1956, this Court issued another order giving the parties five days from notice to state whether or not the amicable settlement of the case would go through. On October 27, 1956, counsel for defendant filed another manifestation to the effect that he expects the amicable agreement to materialize, but on October 29, 1956, counsel for plaintiff also filed a manifestation to the effect that defendant's offer of settlement could not be accepted by plaintiff because said defendant was not even able to make partial

payment of his indebtedness, so counsel for plaintiff prays that this case be decided on plaintiff's evidence. On November 7, 1956, counsel for defendant filed a motion asking that the parties be given further opportunity to compromise the case, and on November 10, 1956, this Court granted them twenty days for that purpose. On December 5, 1956, counsel for defendant asked for another period of time to submit the said compromise agreement, but in view of the fact that the said motion does not bear the conformity of counsel for plaintiff, and the further fact that his case has been dragging on for an unreasonable period of time, the said motion was denied and the case was considered submitted for decision upon plaintiff's evidence, hence this decision.

The Philippine Relief and Trade Rehabilitation Administration (PRATRA) was dissolved on 3 October 1950 and its "personnel, records, properties, equipment, assets, rights, choses in action, obligations, liabilities, and contracts were transferred to, vested in and assumed by the Price Stabilization Corporation (PRISCO).[1] The latter was dissolved on 17 June 1955 and its "personnel, records, cash, such needed equipment, rights and contracts * * * involving real estate, fixed assets and stock in trade," were transferred to the National Marketing Corporation (NAMARCO).[2]

On 28 January 1957 the appellant filed a motion for new trial in the lower court on the ground that the judgment was rendered by mistake because he was deprived of the opportunity to present his evidence; and that he and his counsel failed to arrive in Court on time in the morning of 10 August 1956, the day set for the presentation of his evidence, because of heavy traffic on the way from Quezon City, where he resides, to Manila. As no affidavit of merit was attached to the motion for new trial, as provided for in sections 1 and 2 of Rule 37, the motion was correctly denied.

The Court has afforded the appellant the opportunity to present evidence in his behalf. On 27 August 1956, the Court, upon motion of the appellant, and over the objection of the appellee, set aside its verbal order of 10 August; considered the case submitted for decision on the basis of the appellee's evidence alone; and granted the appellant twenty days from receipt of notice to inform the Court of the status of his alleged negotiation with the appellee for an amicable settlement of the case. On 17 September the appellant filed a manifestation informing the Court that he was awaiting the favorable reply of the appellee to his proposals for amicable settlement of the case. On 22 October the Court entered an order directing the parties to state within five days from receipt of notice whether or not the proposed amicable settlement would materialize so that it could take the proper action to terminate the case. On 27 October the appellant filed

[1] Executive Order No. 350, series of 1950, 46 Off. Gaz. 4660–4664.
[2] Section 18, Republic Act No. 1345.

a manifestation informing the Court that the proposed amicable settlement was still under negotiation and consideration by the appellee. On 29 October the appellee informed the Court that its Board of Directors had rejected the appellant's offer of amicable settlement because its terms were unacceptable and prayed that judgment be rendered on the basis of the evidence it has presented. According to the Court, on 7 November the appellant filed a motion praying that the parties be granted further opportunity to settle the case amicably and on 10 November it granted them twenty days for that purpose. On 5 December the appellant filed a motion praying that the period of twenty days set by the Court for the parties to settle the case amicably be extended to January 1957, because the amended proposal he had submitted was still under consideration by the appellee, and that as evidence of his sincerity to settle the case amicably, he had offered and the manager of the appellee had accepted payment of ₱2,000 pending acceptance and consideration of his offer. On 6 December the Court denied the appellant's motion for extension of the period to submit a compromise agreement because it did not bear the consent of the appellee and considered the case submitted for decision upon the evidence already presented. On 2 January 1957 the Court rendered judgment which is now the subject of this appeal. It is not, therefore, correct to say that the appellee had been deprived of his day in court.

Furthermore, in his answer to the appellee's complaint, he merely alleged that "he has no knowledge or information sufficient to form a belief as to the truth of the matters contained in paragraphs 3, 4, 5 and 6 so much so that he denies specifically said allegations." A denial is not specific simply because it is so qualified.[1] Material averments in a complaint, other than those as to the amount of damage, are deemed admitted when not specifically denied.[2] The court may render judgment upon the pleadings if material averments in the complaint are admitted.[3]

The judgment appealed from is affirmed, with costs against the appellant.

Parás, C. J., Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., Endencia, Barrera, and *Gutiérrez David, JJ.,* concur.

Judgment affirmed.

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[1] Sections 6 and 7, Rule 9; El Hogar Filipino *vs.* Santos Investments, Inc., 74 Phil. 79; Bactamo *vs.* Amador, 74 Phil. 735; Dacanay *vs.* Lucero, 76 Phil. 139; Lagrimas *vs.* Lagrimas, G. R. No. L-6462, 28 May 1954.

[2] Section 8, Rule 9.

[3] Section 10, Rule 35; Bactamo *vs.* Amador, *supra;* Lichauco *vs.* Guash, 76 Phil. 5; Lati *vs.* Valmores, G. R. No. L-6377, 30 March 1954.

[No. L-12758. November 28, 1959]

FRANCISCO COLLEGE, INC., petitioner and appellee *vs.* TOMAS P. PANGANIBAN, ET AL., oppositors and appellants.

1. COURT OF LAND REGISTRATION; JURISDICTION; CANCELLATION OF THE ANNOTATION OF A DEED OF TAX SALE; DETERMINATION OF PRIORITY OF SALES.—Where the issue involved in a petition for the cancellation of the annotation of a deed of tax sale on a transfer certificate of title is not one of ownership but merely of priority of the sales made covering the same property which is covered by a Torrens title, said petition can be acted upon by the court in its capacity as land registration court.
2. REGISTRATION OF TITLE TO LAND; PRIORITY AND PREFERENCE; ISSUANCE OF CERTIFICATE OF TITLE PRIOR TO REGISTRATION OF TAX SALE.—Since the registration of the final deed of tax sale in the Office of the Register of Deeds was subsequent to the issuance of the transfer certificate of title in question in favor of the petitioner, there is no valid reason to subject or subordinate the petitioner's title, right and interests over said property to such final deed of tax sale. Under the provisions of the Land Registration Act, he who is first in time is preferred in right. (Martinez de Gomez *vs.* Hugo, 48 Phil.) Moreover, Section 39 of said Act provides, among other things, that every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all encumbrances except those noted on said title.
3. ID.; ID.; STATUTORY LIEN TO PROTECT A TAX CLAIM AND THE RIGHT OF THE PURCHASER TO SATISFY LIEN; DISTINGUISHED.—There is a difference between a statutory lien established by law to protect a tax claim and the right of the purchaser of property sold to satisfy the lien insofar as its effect and validity on a subsequent purchaser is concerned, for while statutory lien need not be registered, the sale of registered land to foreclose a tax lien need be registered to be considered preferred.

APPEAL from an order of the Court of First Instance of Manila. Cañizares, *J.*

The facts are stated in the opinion of the Court.

Vicente J. Francisco for the petitioner and appellee.
Panganiban Law Offices for the oppositors and appellants.

BAUTISTA ANGELO, *J.:*

This is an appeal from an order of the Court of First Instance of Manila directing the cancellation of the annotation of a deed of sale on the back of Transfer Certificate of Title No. 38606.

On February 5, 1957, Francisco College, Inc. filed a petition before the court *a quo* alleging that Jose J. Francisco was the owner of a parcel of land containing an area of 260 sq. m., more or less, with the building and improvements thereon, situated in the City of Manila, and covered by Transfer Certificate of Title No. 9865; that Francisco mortgaged the property to the Rehabilitation Finance Corporation and because he failed to comply with

the conditions of the mortgage, the same was foreclosed and the property sold at public auction on April 12, 1950 to the Rehabilitation Finance Corporation as the highest bidder; that on July 13, 1951, the Register of Deeds issued to said corporation Transfer Certificate of Title No. 26609 free from any lien or encumbrance; that on February 17, 1955, petitioner bought the property from the Rehabilitation Finance Corporation for the sum of ₱62,000.00 and the Register of Deeds issued in its favor Transfer Certificate of Title No. 38606 also free from any lien or encumbrance; that on account of an alleged tax sale made by the city treasurer on August 4, 1949 in favor of Luciano L. Tapia and Tomas P. Panganiban of the same property allegedly owned by Jose Urrutia Francisco for the latter's failure to pay the taxes thereon for the years 1945, 1946 and 1947, the Register of Deeds of Manila demanded from petitioner its owner's duplicate transfer certification of title and inscribed thereon the alleged sale of the property made by the said treasurer; and on February 5, 1957, petitioner filed the instant petition praying for the cancellation of the annotation above referred to.

On March 4, 1957, Luciano L. Tapia and Tomas P. Panganiban filed a written opposition alleging that the property in question belonged to Jose Urrutia Francisco; that due to his failure to pay taxes for the years 1945, 1946 and 1947, the property was sold at public auction on February 14, 1948 by the City Treasurer of Manila, the same having been adjudicated to oppositors for the sum of ₱276.00, and that upon failure of Francisco to redeem the property within one year, the city treasurer executed on August 4, 1949 a final deed of sale in favor of oppositors, which sale has become final and irrevocable.

On March 7, 1957, the court, overruling the opposition, ordered the cancellation of the annotation in question on the back of Transfer Certificate of Title No. 38606. Oppositors filed a motion for reconsideration, and when the same was denied, they interposed the present appeal.

The first point raised by oppositors is that the trial court erred in not dismissing the petition for the reason that their opposition raises a controversial question which cannot be acted upon by it in its capacity as land registration court under Section 112 of the Land Registration Act in view of its special and limited jurisdiction.

The contention is untenable for the simple reason that the issue involved herein is not one of ownership but merely of priority of the sales made covering the same property which is covered by a Torrens title. The purpose of the petition is merely to ask for the cancellation of the annotation made on the back of petitioner's certificate of title of the deed of sale made in favor of oppositors

by the City Treasurer of Manila it being alleged that petitioner bought said property from its original owner in good faith and for value free from any lien or encumbrance of any nature. And this can be determined by a cursory examination of the pleadings in relation to the law and jurisprudence on the matter. The trial court made a correct evaluation of the equities of the parties when on this matter it made the following pertinent consideration:

"It appearing indisputably from the pleadings of both parties that the registration of the final deed of tax sale in question in the Office of the Register of Deeds was subsequent to the issuance of Transfer Certificate of Title No. 38606 in favor of the petitioner, this Court can find no valid reason to subject or subordinate the title, right and interests of the petitioner over said property, to such final deed of tax sale. Under the provisions of the Land Registration Act, he who is first in time is preferred in right. (Martinez de Gomez *vs.* Hugo, 48 Phil.) Moreover, Section 39 of said Act, provides, among other things, that every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all encumbraces except those noted on said title. In the instant case, when the title of the petitioner was issued, it was free of the annotation of the final deed of tax sale in favor of the oppositors. Unless, therefore, the oppositors can positively prove otherwise in an independent action the herein petitioner is legally presumed to have acquired the property described in Transfer Certificate of Title No. 38606 for value in good faith and by law is entitled to hold the same free from such annotation of the final deed of sale."

It is true that the taxes for which the property was sold by the City Treasurer of Manila were for the years 1945, 1946 and 1947 and the property was sold at public auction on February 14, 1948 and therefore are of a nature that create a statutory lien which need not be registered to be binding upon third persons, but it is likewise true that oppositors did not register their deed of sale until June 16, 1955, or months after Transfer Certificate of Title No. 38606 was issued in favor of petitioner. We should bear in mind that there is a difference between a statutory lien established by law to protect a tax claim and the right of the purchaser of property sold to satisfy the lien insofar as its effect and validity on a subsequent purchaser is concerned, for while a statutory lien need not be registered, the sale of registered land to foreclose a tax lien *need be registered* to be considered preferred. This is the issue squarely decided by this Court in the case of Metropolitan Water District *vs.* Reyes, 74 Phil., 142, from which we quote:

"Is it necessary to register a tax sale of real property covered by a Torrens title to affect said property insofar as third persons are concerned? Respondent contends that since he bought the property at the foreclosure of a tax lien thereon and since by virtue of section 39 of Act No. 496 a tax lien does not have to be

registered, it was not necessary for him to register his certificate of sale in order to affect third persons. Such contention fails to distinguish the lien itself from the foreclosure thereof. It is not necessary to register a tax lien because it is automatically registered, once the tax accrues, by virtue of section 39, which expressly provides that every person receiving a certificate of title in pursuance of a decree of registration and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all incumbrance *except* those noted on said certificate *and* any of the following incumbrances which may be subsisting: '* * * *taxes within two years after the same became due and payable* * * *.' But there is no provision of law to the effect that the sale of registered land to foreclose a tax lien need not be registered. On the contrary, section 77 of Act No. 496 specifically provides (insofar as it is pertinent here) that whenever registered land is sold for taxes or for any assessment, any officer's return, or any other instrument made in the course of proceedings to enforce such liens shall be filed and registered in the registration book, and a memorandum made upon the proper certificate, in each case, as an adverse claim or incumbrance. Section 50 also expressly provides that the act of registration shall be the operative act to convey and affect the land."

It appearing that petitioner bought and registered the property in question from its original owner free from any lien or encumbrance, and oppositors registered their deed of sale concerning the same property *subsequent thereto,* even if the property was sold for taxes within two years after the same become due and payable, it follows that the deed of sale of oppositors cannot be deemed preferred over that of petitioner, and therefore the trial court did not err in ordering the cancellation of the annotation of said sale on the back of Transfer Certificate of Title No. 38606. As this Court said in the Metropolitan Water District case: "It is clear therefore that the tax sale made by the City Treasurer to the respondent on May 4, 1937 *did not bind the land and did not affect the petitioner until it was registered on November 3, 1938.*" (*Italics supplied*)

WHEREFORE, the order appealed from is affirmed, without pronouncement as to costs.

Parás, C., J., Bengzon, Padilla, Labrador, Endencia, Barrera, and *Gutiérrez David, JJ.,* concur.

Order affirmed.

[No. L-12280. January 30, 1960]

PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* PIO TEMPLONUEVO, defendant and appellant.

1. EVIDENCE; WITNESSES; CREDIBILITY; DELAY IN EXECUTING AFFIDAVIT NOT SOUND BASIS TO DESTROY OTHERWISE CREDIBLE TESTIMONY.—Where a witness who has no improper motive to wrongfully incriminate the accused, related without any material inconsistencies that he saw said accused strike the deceased on the forehead with a piece of wood, thus corroborating the medical report about the contusions found thereon, his testimony should be given credence. The fact that said witness executed an affidavit about the incident only four days after the occurrence, which delay he ascribed to fear of possible reprisal, is not a sound basis to destroy his otherwise credible declarations.
2. ID.; ID.; ID.; TESTIMONY OF A SINGLE PERSON; WHEN SUFFICIENT TO PRODUCE CONVICTION.—The testimony of a single witness may be sufficient to produce conviction if it appears to be trustworthy and reliable (People *vs.* Zabala, 86 Phil., 251).
3. CRIMINAL LAW; ACCOMPLICES; VICTIM SLAIN BY CO-ACCUSED AFTER BEING RENDERED UNCONSCIOUS BY APPELLANT'S BLOW.—Where it is shown that appellant struck the deceased on the forehead with a piece of wood, rendering the latter unconscious, thereby facilitating the subsequent slaying of the deceased by appellant's co-accused, said appellant must be deemed responsible as an accomplice in the killing. He cooperated in it by previous or simultaneous acts, albeit non-indispensable ones, as his co-accused could have killed the victim with his bolo even if appellant had not intervened.

APPEAL from a judgment of the Court of First Instance of Catanduanes. Quicho, *J.*

The facts are stated in the opinion of the Court.

Acting Solicitor General Guillermo E. Torres and *Solicitor Ceferino S. Gaddi* for the plaintiff and appellee.

Rafael Triunfante and *Gabriel Torrecampo* for the defendant and appellant.

REYES, J. B. L., *J.:*

Cipriano Tapia and Pio Templonuevo were convicted of the crime of murder by the Court of First Instance of Catanduanes, for the killing of Leopoldo Gonzalo. Each of them was sentenced to suffer the penalty of *reclusión perpetua,* with all the accessory penalties, and to indemnify, jointly and severally, the heirs of the deceased victim in the amount of ₱3,000.00. This is an appeal by Pio Templonuevo alone from the judgment of conviction and from the sentence.

A close review of the evidence of record discloses that in the early morning of December 8, 1953, feast day of the town of Virac, Catanduanes, while Mamerto Balla, a cook hired for the occasion, and Cipriano Tapia, his helper, were preparing breakfast in the house of Jaime Templonuevo and his family, one Leopoldo Gonzalo,

who just arrived in town by sea from Tabaco, Albay, knocked at the door and asked for the loan of a bolo with which to cut banana leaves. His request was refused by the cook, Mamerto Balla, explaining that there were only two bolos and both were then being used in the kitchen. Disappointed, Gonzalo went down. A maid of the Templonuevos then suggested that Cipriano Tapia should lend one of the bolos; whereupon, the latter followed Gonzalo downstairs. However, before anything could be said by Tapia, Gonzalo angrily remarked, "putang ina mo" (probably because of resentment), and an altercation ensued. What transpired during this period was narrated by Mamerto Balla, who remained in the kitchen. Hearing the commotion downstairs, he said, he peeped through the window of the kitchen and from that position, saw Gonzalo struggling with Cipriano Tapia and Pio Templonuevo; the letter struck Gonzalo on the forehead with a piece of wood, rendering him unconscious. Thereupon, Cipriano Tapia slashed the throat of the helpless victim with a hunting knife. The lifeless body of the man was carried away by the duo and dumped behind a pile of empty drums near the Virac Electric Plant, a few meters from the house of the Templonuevos.

An examination conducted on the spot at about 8:30 the same morning by Dr. Macario Ballesteros, then Chief of the Emergency Hospital of Catanduanes, revealed that death must have occurred at about 6:30 a.m., more or less, and that the deceased had a round, bluish discoloration, of about 1-1/3 inches in diameter, in the middle superior region of the forehead, and an incised, transverse, penetrating wound which completely cut the throat till the posterior wall of the pharyngeal cavity. Dr. Ballesteros also declared in his report that the contusion found on the forehead and the incised wound in the neck were *ante mortem* lesions, homicidal in character (Exhibit "E"). This report was later confirmed by the doctor's testimony.

The first point urged by the defense is the propriety of appellant's conviction upon the testimony of Mamerto Balla, whose declarations, it is maintained, must be viewed with suspicion. Scrutinizing Balla's statements, we fail to see anything that would make us doubt his veracity. He categorically stated that he saw appellant strike the deceased on the forehead with a piece of wood, thus corroborating Dr. Ballesteros's report about the contusions found thereon when Gonzalo's cadaver was examined. Balla related the incident without incurring in material inconsistencies. His credibility, as far as the records disclose, cannot be impugned. In fact, appellant could not attribute anything about this witness that would have prompted the latter to wrongfully incriminate him. The

lower court, who had every chance to observe his demeanor during the trial, has said: "Mamerto Balla's affidavit and testimony are trustworthy, credible and believable and true portents of truth", and we find no reason to reverse this pronouncement.

The defense assails Balla for his seeming hesitancy in that he executed an affidavit about the incident only on December 12, 1953, four days after the occurrence. This delay, however, was ascribed by him to fear of possible reprisal, and he so stated to Sgt. Amado Baloloy of the Philippine Constabulary. At any rate, it is no sound basis to destroy the otherwise credible declarations of this witness, as to appellant's participation, supported as it is by those of Tapia.

The testimony of a single witness may be sufficient to produce conviction if it appears to be trustworthy and reliable (People *vs.* Zabala, 86 Phil., 251 and cases cited therein). In this case, it is corroborated by the nature and positions of the wounds.

The defense gives much emphasis to Cipriano Tapia's owning that he alone committed the offense in his written statement of December 17, 1953 (Exhibit "A–Tapia"). It is to be noted, however, that Tapia's previous affidavits (Exhibit "1–Tapia" and Exhibit "N") had already implicated Pio Templonuevo in the crime and the charge was reiterated later, in another sworn declaration (Exhibit "5"), and in his testimony in court as well. There is also evidence that what really prompted Tapia to exculpate the appellant was money consideration (p. 26, t.s.n., Batalla), and, in all probability, the desire to protect his coaccused who is a relative of his employer.

The appellant's *alibi* is that he was working on an auto truck and its engine, some 115 meters away from Templonuevo's house, when the slaying took place; and that he only saw Gonzalo's corpse when, summoned by Mrs. Jaime Templonuevo, he chanced to pass by the dead man. But he is contradicted by Mrs. Templonuevo's denial of having summoned the appellant; and the distance is not such as to completely exclude the possibility of appellant's participation in the heinous deed. Further taking Balla's positive testimony into account, the *alibi* carries no weight.

There remains the question of appellant's liability. The attack on, and slaying of, Gonzalo was admittedly the sequel to a heated dispute between the deceased and the two accused. No prearranged plan between the latter is directly or indirectly shown, so that proof of conspiracy is lacking. While appellant's participation in the attack is clearly proved, the doctor who performed the autopsy admitted that "el golpe recibido no ha sido

tan fuerte"; that there was no cranial fracture, and the blow merely caused the deceased to fall unconscious, thereby exonerating the appellant from direct responsibility for the killing of the deceased. In truth, the death certificate (Exhibit "2–Templonuevo) gives "profuse hemorrhage due to cut wound in the neck" as sole cause of death. But as it is incontrovertible that the appellant Pio Templonuevo, by rendering Gonzalo unconscious, facilitated his subsequent slaying by Tapia, said appellant must be deemed responsible as an accomplice in the killing. He cooperated in it by previous or simulteneous acts, albeit non-indispensable once, as Tapia could have killed Gonzalo with his bolo even if Templonuevo had not intervened (R.P.C. Article 18, People *vs.* Cortés, 55 Phil. 143; People *vs.* Tumayao, 56 Phil. 587; People *vs.* Aplegido, 76 Phil. 571; Sentencias of the Tribunal Supremo of Spain, 24 May 1879 and 13 July 1900).

Was it murder or homicide? The lower court declared it to be murder qualified by treachery, but the Solicitor General correctly points out that the absence of conspiracy and the immediately preceding quarrel belie the existence of treachery. Appellant, therefore, should be held a mere accomplice to a crime of homicide. Liability is further mitigated by provocation on the part of the deceased, who unwarrantedly insulted appellant and his companion and thereby invited retaliation.

Pursuant to Article 52 of the Revised Penal Code, the accomplice of a consummated homicide should be imposed the penalty next lower in degree to *reclusión temporal* (penalty for the main offense). In this case, it is *prisión mayor* in its minimum degree, because of the extenuating circumstance. Applying the indeterminate Sentence Law, the Court imposes upon appellant Pio Templonuevo not less than four (4) years of *prisión correccional* and not more than eight (8) years of *prisión mayor*, plus the accessory penalties prescribed by law and the civil indemnity fixed by the court below.

SO ORDERED. No costs in this instance.

Parás, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepción, Endencia, Barrera, and *Gutiérrez David, JJ.,* concur.

Judgment modified.

[No. L-12827. February 29, 1960]

SMITH, BELL & CO., LTD., plaintiff and appellee, *vs.* PHILIPPINE MILLING CO., defendant and appellant.

1. PETITION FOR RELIEF; PERIOD FOR FILING NON-EXTENDIBLE.—The petition for relief under Rule 38 of the Rules of Court must be filed within sixty days after the petitioner learns of the judgment, order or other proceeding to be set aside. The period is non-extendible and is never interrupted. It is not subject to any condition or contingency, because it is itself devised to meet a condition or contingency.

2. ID.; LOSS OF REMEDY DUE TO NEGLIGENCE OF PARTY.—Relief will not be granted to a party who seeks to be relieved from the effects of a judgment when the loss of the remedy at law was due to its negligence.

APPEAL from an order of the Court of First Instance of Manila. Ibáñez, *J.*

The facts are stated in the opinion of the Court.

Ross, Selph, Carrascoso & Janda for the plaintiff and appellee.

Orbase, Abel & David for the defendant and appellant.

GUTIÉRREZ DAVID, *J.:*

This is an appeal from an order of the Court of First Instance of Manila, denying defendant-appellant's petition for relief from judgment under Rule 38. The appeal was taken to the Court of Appeals, but that Court has certified the case to us on the ground that the question involved is purely legal.

It appears that on March 12, 1956 a decision was rendered in civil case No. 27201 by the court *a quo* against the defendant-appellant and in favor of plaintiff-appellee for the amount of ₱2,125.00, plus attorney's fees and costs. The court handed down the decision after hearing plaintiff's evidence, the defendant having failed to appear at the hearing.

Defendant received a copy of the decision on March 16, 1956, but instead of appealing therefrom, it filed on April 2, 1956 a petition entitled "Relief from Judgment." The petition was, however, denied for lack of merit in an order dated April 16, copy of which was received by defendant on April 21.

The judgment subsequently become final and on May 21, 1956, upon motion filed by plaintiff with notice to defendant, the writ of execution was issued.

On May 29, 1956, defendant filed another petition for "Relief from Judgment with Preliminary Injunction." Acting upon the petition, the court *a quo* on July 21, 1956 denied the same, the court stating that—

"Even considering defendant's pleading, entitled 'RELIEF FROM JUDGMENT' dated March 31, 1956, filed on April 2, 1956, to be a mere motion for reconsideration of the decision, which was denied by the Court in its order of April 15, 1956, the proper remedy for the defendant was to appeal from the decision of March 12, 1956,

after the Court had refused to reconsider said decision because at that time the decision had not as yet become final. The failure of the defendant to appeal from the decision after the Court had denied to reconsider it before it had become final, deprives the said defendant of the right to file a petition for relief from judgment under Rule 38 of the Rules of Court."

The motion for reconsideration of the above-mentioned order having been also denied, defendant filed the present appeal.

The appeal is without merit.

The petition for relief under Rule 38 of the Rules of Court must be filed "within sixty days after the petitioner learns of the judgment, order or other proceeding to be set aside * * *." The period is non-extendible and is never interrupted. As stated in the case of Palomares et al. *vs.* Jimenez (G. R. No. L–4513, January 31, 1952):

"* * * Considering the purpose behind it, the period fixed by Rule 38 is non-extendible and is never interrupted. It is not subject to any condition or contingency, because it is itself devised to meet a condition or contingency. The remedy allowed by Rule 38 is an act of grace, as it were, designed to give the aggrieved party another and last chance. Being in the position of one who begs, such party's privilege is not to impose conditions, haggle or dilly-dally, but to grab what is offered him." (See also Rafanan *vs.* Rafanan, 52 Off. Gaz., 229.)

It is not disputed that defendant received its copy of the decision sought to be set aside and learned of it on March 16, 1956. From that date to May 29, 1956, when said defendant filed its second petition for "Relief from Judgment with Preliminary Injunction", 74 days had already elapsed. The petition, therefore, could no longer be properly entertained, it having been filed 14 days too late.

Moreover, as observed by the lower court, defendant could have appealed the decision it now seeks to set aside but failed to do so, thereby allowing it to become final. Thus, even after April 21, 1956, when defendant received a copy of the order denying its first petition for relief—which may be considered a motion for reconsideration—it still had several days within which to perfect an appeal. Such being the case, it could no longer avail itself of the remedy under Rule 38. Relief will not be granted to a party who seeks to be relieved from the effects of a judgment when the loss of the remedy at law was due to its negligence. (Robles et al. *vs.* San Jose et al., 52 Off. Gaz. 6193.)

Wherefore, the order appealed from is affirmed, with costs against defendant-appellant.

Parás, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., and *Endencia, JJ.,* concur.

***Barrera, J.,* in the result.**

DECISIONS OF THE COURT OF APPEALS

[No. 21344–R. June 28, 1960]

FRANCISCO R. MENDOZA and ELIODORO RIMANDO, plaintiffs and appellants, *vs.* ERNESTO L. MARQUEZ, THE DIRECTOR OF MINES and THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, defendants and appellees.

1. MINING LAW; MINING CLAIM; WAIVER AND ABANDONMENT.—Waiver and abandonment of a mining claim may be implied from the fact that the owner of a piece of land has allowed another to enter and locate minerals therein. 40 C. J., pp. 840–841; Brown *vs.* Gurney, 201 U. S. 184, 192, 32 Colo. 472.
2. MALICIOUS PROSECUTION; DAMAGES; MERE DISMISSAL OF CRIMINAL CASE DOES NOT GIVE RISE TO A CAUSE OF ACTION; REASONS BEHIND RULE.—Mere dismissal of a criminal case would not give rise to a cause of action for damages in favor of the accused, for such dismissal does not necessarily imply malicious prosecution within the meaning of Article 2219 (8) of the Civil Code. Tiangko, et al., *vs.* Reyes, et al., 52 O. G., No. 5, pp. 2574, 2577. To hold otherwise would, in many cases, prevent discovery of crimes for fear of reprisal in the form of a damage suit, and erect an effective roadblock against free access to the portals of the courts of justice. Barreto *vs.* Arevalo, et al., 52 O. G. No. 13, pp. 5818, 5824; Cabasaan *vs.* Anota, et al., CA–G. R. No. 14169–R, November 19, 1956.
3. ID.; ID.; ID.; ID.; MALICIOUS PROSECUTION NOT FAVORED.—An action for malicious prosecution is not favored in law. Public policy encourages the exposure of the crime, which a recovery against a prosecutor obviously tends to discourage. Salvador *vs.* Ang. et al., CA–G. R. No. 17564–R, April 16, 1958, citing: 34 Am. Jur., 705–706.

APPEAL from a judgment of the Court of First Instance of Marinduque. Ramos, *J.*

The facts are stated in the opinion of the Court.

Moises S. Rimando & German C. Alejandria, for plaintiffs and appellants.

V. B. Magadia, for defendant and appellee Ernesto L. Marquez.

Assistant Solicitor General Guillermo E. Torres and *Attorney Benjamin Gozon,* for defendants and appellees Director of Mines and Secretary of Agriculture and Natural Resources.

SANCHEZ, *J.:*

Plaintiff Francisco R. Mendoza is the owner of a parcel of land in sitio Bathala, barrio Ipil, municipality of Sta. Cruz, Marinduque. Mainly planted with coconuts, several caves containing guano and phosphatic rock deposits are also found therein.

On April 19, 1951, defendant Ernesto L. Marquez filed with the Mining Recorder of Marinduque a declaration

of location for placer claim named "Bathala Super Fertilizers" within the foregoing property for the purpose of extracting therefrom guano and other fertilizers. Exhibit A.

On May 24, 1951, Marquez registered with the said Mining Recorder the corresponding application for lease of the above described mining claim. Exhibit K.

On June 30, 1951, Marquez amended his declaration of location aforesaid. Exhibit C or N.

On August 17, 1951, the Bureau of Mines granted defendant Marquez Mines Temporary Permit No. V–65 to extract 300 tons of guano from the aforesaid mining claim. Exhibit 16.

On November 6, 1951, plaintiff Mendoza filed a placer mining protest against the placer lease application of, and the mines temporary permit granted to, Marquez heretofore mentioned. Exhibit O.

On December 13, 1951, pursuant to Section 73 of the Mining Act, plaintiffs herein started suit praying: on the first cause of action, that Marquez' placer lease application be rejected, and that the mines temporary permit issued to him be cancelled; and, on the second cause of action, that defendants, jointly and severally, be held liable to plaintiffs in damages arising out of the filing by defendant Marquez of criminal complaints for trespass and grave coercion against them. The judgment below reads:

"WHEREFORE, this Court hereby renders judgment in favor of the defendants and against the plaintiffs declaring that the latter have no rights of action against the former, which are hereby dismissed, with costs. This judgment is without prejudice to the rights of the plaintiff Mendoza, if he has any, under Section 27 of the Mining Act No. 137."

Plaintiffs appealed.

1. By Section 27 of the Mining Act, before entering a private land, "the prospector shall first apply in writing for written permission of the private owner" of the land. And, Section 67 of the same law requires that the application for a lease of mineral land "shall be accompanied by a written authority of the owner of the land". Concededly, appellant Francisco R. Mendoza is the owner of the land.

The first question then is whether or not permission was obtained by appellee Marquez from appellant Mendoza.

Appellants admit in paragraph 5 of their first cause of action that:

On April 17, 1951, appellant Mendoza signed a certification, Exhibit B, the body of which reads:

"This is to certify that I have authorized Mr. E. L. Marquez, Gen. Manager of Acmar & Co., to survey and prospect the Guano Mines situated in my land and located in this barrio* above mentioned";

and that, on August 28, 1951, he swore to a document, Exhibit D, stating:

"That I, Francisco Mendoza, Filipino, of legal age, married and a resident of the Municipality of Santa Cruz, Province of Marinduque, do hereby authorize or allow or permit Ernesto L. Marquez to explore all kinds of mines or mineral resources which might or may be located in my land, declared in my name being evidenced by Tax Declaration No. 49420, which land is located in the barrio of Ipil, Sitio of Bathala, Municipality of Santa Cruz, Province of Marinduque."

The foregoing documents satisfy the legal requirement of written permit from the owner.

But appellants argue that there was a contemporaneous verbal agreement between Mendoza and Marquez that the mining claim in question was to be filed in Mendoza's name. We do not think so.

If, as appellants aver, Marquez would only serve in a representative capacity, in the ordinary course of events, the permits would have said so. Indeed, the very issuance of the permits, Exhibits B and D, to Marquez—personally—negates the existence of an agency. For, those permits are only exacted by law to support the declaration of location and application for lease of a mining claim by one not the owner of the mining ground—and Marquez was not such owner. If Marquez were a mere agent of Mendoza, then those documents were useless; all that was needed would have been a power of attorney for the purpose, just as Mendoza attempted to accomplish by the execution of a power of attorney (Annex A of Exhibit O) in favor of one Emelino M. Rimando. If more were needed, we have Mendoza's admission that in granting the permits, he expected benefits should the guano mines be profitable; for Marquez promised to give him money. This jibes with the circumstance that although Mendoza was present at the time the survey was made, he never inquired in whose name the same was being undertaken.

The following, from the testimony of Mendoza's son-in-law, the other appellant Eliodoro Rimando, is as significant:

"Q—Do you know the reason why Mr. Ernesto L. Marquez filed these cases against you when as you said you were on very friendly terms at the outset?

A—When he was able to ship the second shipload of one truck of this guano I begun to doubt his sincerity about his giving compensation to my father-in-law and (when) I heard that he was in sitio Bathala to ship some more guano, my father-in-law and I went there for the purpose of making agree-

* Barrio Ipil, Sta. Cruz. Marinduque.

ment with him with the compensation inasmuch as there was no contract yet signed by my in-laws regarding that matter. So I went there to clarify the matter.

Q—On that point what happened? Did he resent it?

A—While we were on the way I met Marquez, together with his laborers and the three of us, my father-in-law, my mother-in-law and I approached this Jose Mangcuacang, the superintendent of the guano mines of Ernesto L. Marquez, to talk about the matter regarding the compensation to be given to my father-in-law." (Tr., pp. 114–115.)

The foregoing indicates a previous agreement that the mines were to be operated by Marquez in his own behalf—not in the name of Mendoza; and that all that the latter expected was compensation should Marquez' venture prove a success.

Appellants have the burden of proving the alleged verbal agreement. Section 70, Rule 123, Rules of Court. And, appellants failed.

2. But appellants insist that Mendoza had a preferential right to locate and lease the mining claim in controversy, and that he (Mendoza) had not waived that right.

Appellants' evidence is that Mendoza's father, the previous owner of the land, knew of the existence of guano in the caves therein long before the Mining Act (Commonwealth Act No. 137) took effect on November 7, 1936. Annex A, Exhibit O. The report, Exhibit 24, of the Mineral Land Surveyor Pedro Mendoza states that, according to appellant Mendoza, "a certain fellow worked on this area before the war and was able to transport several hundred sacks of guano". Said appellant, accordingly, could be treated as a "successor in interest" of one who made the "actual discovery" of the guano deposits.

Section 32 of the Mining Act provides that the person making actual discovery of minerals or his successor-in-interest "shall have the preferential right to locate and lease the mining claims covering the minerals discovered". But mere discovery is not sufficient. Section 32 itself states that said preference is "subject to the provisions of this Act". And, Section 28 of the same law only prohibits prospecting in lands in which "minerals have been discovered prior to the effective date of this Act" when said minerals "are claimed by the discoverer or his successors in interest". Here, no claim was made by appellant Mendoza to the minerals discovered—he had not, at any time, located the same or filed a declaration of location with the mining recorder, what with the lapse of years from discovery. By these, he has waived and abandoned his right to that mining claim. Sections 33 and 34, Mining Act.

Waiver and abandonment may also be implied from the fact that Mendoza allowed Marquez to enter and locate

minerals in his land. 40 C. J., pp. 840–841; Brown *vs.* Gurney, 201 U.S. 184, 192, 32 Colo. 472.

Adverting to Section 28 aforesaid and the authorities just cited, there was no impediment to the declaration of location and application of lease of mining claim registered by appellee Marquez.

3. It avails appellant Mendoza nothing to say that he did not profit by reason of the exploitation of the mines by Marquez. That is a private matter between him and Marquez which is immaterial to the settlement of the present controversy. Appellant Mendoza does not claim "disagreement as to the amount of compensation to be paid" for the "privilege of prospecting" on his land such as would require the intervention of the Bureau of Mines or the court. Section 27, Mining Act. Mendoza's theory all along was that Marquez fraudulently registered the mining claim in the latter's name—not as representative of the former—which has not been proven. At any rate, the judgment below was emphatic in that the same was "without prejudice to the rights of the plaintiff Mendoza, if he has any", under the legal provisions just quoted.

4. We now come to the question of appellants' claim for damages arising out of the criminal complaints filed before the Justice of the Peace of Sta. Cruz, Marinduque, for the alleged crimes of trespass against Mendoza, Exhibit P; and grave threats against Mendoza and Rimando, Exhibit Q. In the first, Mendoza was charged with having entered a warehouse of Marquez in sitio Bathala without the consent and against the will of the latter's caretaker; in the second, it is averred that the two appellants threatened, prohibited and stopped operations of the Bathala Super Fertilizers mine. The case for grave threats was provisionally dismissed on motion of Marquez, Exhibit R; and so was that for trespass.

The mere fact that these two cases were dismissed would not give rise to a cause of action for damages in favor of appellants. For, such dismissal does not necessarily imply malicious prosecution within the meaning of Article 2219(8) of the Civil Code. Tiangko, et al. *vs.* Reyes, et al., 52 O.G., No. 5, pp. 2574, 2577. To hold otherwise would, in many cases, prevent discovery of crimes for fear of reprisal in the form of a damage suit. An effective roadblock could thus be erected against free access to the portals of the courts of justice. Barreto *vs.* Arevalo, et al., 52 O.G., No. 13, pp. 5818, 5824; Cabasaan *vs.* Anota, et al., CA–G.R. No. 14169–R, November 19, 1956.

An action for malicious prosecution is not favored in law. Public policy encourages the exposure of the crime, which a recovery against a prosecutor obviously tends to

discourage. Salvador *vs.* Ang, et al., CA–G.R. No. 17564–R, April 16, 1958, citing: 34 Am. Jur., 705–706.

Malice cannot be inferred from the mere fact of dismissal. Leola *vs.* Olivares, CA–G. R. No. 15853–R, November 28, 1956. An over-all view of the case rejects malice as the motive. Rather, an inference can be drawn from the record that those cases were filed for the protection of the interest of Marquez in and to the mineral obtained.

Appellants are, therefore, not entitled to recover damages.

Upon the view we take of this case, the judgment appealed from is hereby affirmed, with costs against appellants.

IT IS SO ORDERED.

Natividad and *Angeles, JJ.*, concur.

Judgment affirmed.

[No. 24165-R. June 30, 1960]

PEDRO SANDOVAL, plaintiff and appellee, *vs.* VICENTE DE GUZMAN, ET AL., defendants and appellants.

1. DAMAGES; INDEMNIFICATION.—It is obvious and elemental that he who knowingly and freely causes damages is obligated to repair and indemnify the same (arts. 19 and 20, new Civil Code).
2. ID.; ID.; RECOVERY UPON PENAL CLAUSE; EVIDENCE.—"Insistence upon receiving satisfaction of penal clause operates as a renunciation of the right to other damages" (Navarro vs. Mallari, 45 Phil. 242), and once the breach of the penal clause is proven, the right to recover the agreed sum arises without the necessity of proving actual damages, because "one of the primary purposes in fixing penalty or in liquidating damages is to avoid such necessity." (Lambert vs. Fox, 26 Phil. 588; Palacios vs. Municipality of Cavite, 12 Phil. 140).
3. CONTRACTS; DAMAGES; PARTY MAY NOT ASSAIL CONTRACT OF HIS OWN MAKING IN ORDER TO EVADE PAYMENT; REASON FOR RULE.—A party can not escape responsibility by shielding himself with the flaws of the contract of his own making (art. 1302, Old Civil Code, Art. 1397 new Civil Code; Manresa, Vol. 8, 707). To rule otherwise would be tantamount to sanctioning deceit and bad faith and to authorize the author of such censurable act to enrich himself at the expense of the other contracting party.

APPEAL from a judgment of the Court of First Instance of Pangasinan. Morfe, *J.*

The facts are stated in the opinion of the Court.

Cipriano P. Primicias and *Bonifacio T. Doria,* for defendants and appellants.

Manuel E. Fernandez, for plaintiff and appellee.

CABAHUG, *J.:*

On June 11, 1951, Pedro Sandoval initiated this action in the Court of First Instance of Pangasinan, seeking to recover from Vicente de Guzman ₱2,000.00 in damages resulting from the latter's partial violation, in May of the same year, of the lease contract attached as annex A of the complaint. On August 1, 1951, the complaint was amended on the ground that in the latter part of June defendant and Odeon Doria not only disturbed plaintiff's peaceful possession of the one-third portion of the land leased to him, but also usurped the entire area and appropriated for themselves 400 milkfish valued at ₱200.00. Plaintiff then prayed that defendant be sentenced to pay the ₱2,000.00 damages provided for in annex A, plus ₱200.00 in actual damages and the costs. In defense, defendant alleged that the lease contract referred to in the complaint "had long been made ineffective by express agreement of the parties." In counterclaim he averred that it was plaintiff who violated the contract by destroying the dikes on the leased land. Aside from

praying for the dismissal of this action, defendant also asked for damages and attorney's fees in the total amount of ₱2,500.00.

After the hearing on October 30, 1951, during which defendant was absent, plaintiff was given 20 days to file his memorandum. The record does not disclose whether or not the required memorandum was ever submitted, but on March 24, 1952, another amended complaint was filed against original defendant Vicente de Guzman and Odeon Doria, *alias* Jose Doria, for the recovery of damages, counsel's fees, and costs from both defendants, jointly and severally. De Guzman's opposition notwithstanding, the re-amended complaint was admitted on January 19, 1953; and upon plaintiff's motion, defendant Doria was declared in default in an order issued on November 26, 1954, which also authorized the clerk of court to receive plaintiff's evidence against Doria. And on December 18, 1954, decision was rendered against both defendants, which decision was however set aside on March 19, 1955 upon their petition, in order to receive De Guzman's evidence and plaintiff's rebuttal. After the denial on December 7, 1955 of the petition to admit the amended answer dated November 23, after the admission on December 9, 1957 of the supplemental answer dated on the 5th of the same month (which merely alleged that the property in question is already registered under the Land Registration Law in the names of the spouses Doria), and after the termination of the hearing on June 24, 1958, the trial court rendered judgment against defendants, who were ordered to jointly and severally pay plaintiff a total of ₱3,200.00. The same judgment likewise ordered defendant Vicente de Guzman, as lessor, to pay plaintiff, as lessee, the ₱2,000.00 damages mentioned in paragraph 6 of exhibit A, plus the amount of ₱30.00 "representing the value of useful improvements, other than those called for in the lease agreement introduced in said fishpond."

Defendants interposed this appeal within the reglamentary period and now assail the appealed judgment under several grounds which will be separately discussed and passed upon hereinbelow.

There is no question that on December 4, 1946, appellant De Guzman and appellee entered into a contract whereby the former, for a period of ten years and for a total rental of ₱600.00 paid in advance on the same date, leased to the latter a piece of land in Binmaley, Pangasinan, described as follows:

"One-half (½) pro-indiviso on the western part of a parcel of rice and, now converted partly into a fishpond, containing an area of 68 ares and 15 centiares, bounded on the N. by River; on the E.

by Ciriaco Fabia, on the S. by Severino Soriano before, now school site, and on the W. by Lucas Fabia before, now Pedro Sandoval and Gervasio Zarate. Assessed at ₱140.00 for the current year under Tax No. 42849)."

Likewise, it is not denied that the lease agreement provides, among others:

"4. That both parties agree that the lessee will take care of the dikes and make some repairs as a good father to the family.

"5 That the lessor agrees not to execute any kind of incumbrance during the period of this lease which will in any way disturb the peaceful possession of the lessee.

"6. That both parties agree that whoever cannot fulfill the terms of his obligation will pay the sum of TWO THOUSAND PESOS (₱2,000.00) as damages and attorneys fees." (exh. A or 6)

Neither is it controverted that the above described parcel of land was previously owned by Domingo de Guzman, who before his death declared the same in his name on June 1, 1922 under tax declaration 42849 (exh. 5); that upon his death he left as his legal heirs his widow, Pascuala Fabia, and children, appellant Vicente de Guzman, Pedro, Alejandra, Brigida, Gregorio, Gregoria and Anastacio, all surnamed De Guzman; that on June 8, 1949, Paula Fabia, Pedro de Guzman, Brigida de Guzman and appellant Vicente de Guzman sold the same parcel of land, including the western half leased to appellee, to Alejandra de Guzman, married to Jose Doria (exh. 2—Odeon Doria); that on December 29, 1950, (see application in exh. 1–defendants) the spouses Doria-de Guzman applied for the registration of the land thus bought by them, particularly described in plan Psu–123550 (exh. 3); and that after proper proceeding without any opposition from appellee, the land was registered in the names of appellant Doria and his wife, in whose favor Original Certificate of Title No. 2104 of the Pangasinan Registry was issued on August 20, 1954 (exh. 4).

Appellee testified that after the execution of exhibit A and the payment of the advanced rental for 10 years, he, together with appellants, located and staked out the western portion leased to him. Thereafter, appellee and his hired men began converting the same portion into a fishpond, investing ₱1,220.00, from which milkfish was gathered three times a year, each harvest valued at ₱200.00. Appellee further declared that in May, 1951, appellants, alleging that the lease of that portion was a mistake, dispossessed him of one-third of the same fishpond; and in the latter part of June of the same year, they ejected him from the entire property just because appellee filed the original complaint against appellant De Guzman on the 11th of June. For their part, appellants tried to establish that the half of the parcel of land described in tax declaration exhibit 5 in the name of

Domingo de Guzman, is a pro-indiviso property of appellant De Guzman and his brothers and sisters aforenamed; and that appellee had never entered into nor constructed any dike on the piece of land subject of the lease, which had been made ineffective by mutual agreement of the parties thereto. However, appellants did not even attempt to prove this alleged mutual agreement of rescission. In fact, signer-appellant De Guzman did not even take the stand to testify on the supposed voluntary cancellation of the contract of lease. Neither is there any competent evidence on record showing that appellee violated condition 4 of exhibit A.

Considering, however, the nature and essence of the action at bar and the answer filed by appellant De Guzman, proofs of the amount of damages sufferred by appellee and of the pro-indiviso character of the property in question are unnecessary and immaterial. The important things here are the authenticity of the contract of lease and the breach by De Guzman (aided by his brother-in-law, appellant Doria) of one of its conditions, for which breach a penal clause or liquidated damage is provided—facts which are either duly established or not disputed by the parties.

Like the original and amended complaints, the re-amended one seeks the recovery of damages arising from a violation of exhibit A. In fact, conditions 5 and 6 of the contract of lease, which are transcribed elsewhere in this decision, also appear verbatim in all the three pleadings. Since exhibit A was not registered under the Spanish Mortgage Law nor under Act 3344, it would seem that the same contract is not binding against appellant Doria, a third person who came to possess the litigated fishpond by purchase from its common owners, one of them appellant De Guzman (article 1648, new Civil Code, 1549 of the old). This appears more so when we consider that four years before the rendition of the judgment appealed from, appellant Doria had already been granted Original Certificate of Title No. 2104 (exh. 4) without any encumbrance in favor of appellee or any other person for that matter. Nevertheless, since the instant action is not for the enforcement of the lease contract, but rather only for the recovery of damages, and since appellant Doria cannot profess ignorance of the controverted contract (for he accompanied appellee and De Guzman in locating and marking the boundaries of the land leased, aside from the fact that he, Doria, took care of and administered the eastern half of the land declared in the name of the late Domingo de Guzman under tax declaration No. 42849, the western portion of which was possessed and enjoyed by appellee since December, 1946 by virtue of exhibit A), appellant Doria had no right to abruptly

terminate the lease (art. 1676, new Civil Code, 1571 of the old). So, by joining his co-appellant De Guzman in forcibly dispossessing appellee of the fishpond in litigation, on the pretext that he had already bought the whole parcel from the heirs of the aforenamed deceased, appellant Doria made himself solidarily liable with his co-appellant for whatever damage the latter may be made responsible as a consequence of the violation of exhibit A. For it is obvious and elemental that he who knowingly and freely causes damages is obligated to repair and indemnify the same (arts. 19 and 20, new Civil Code).

Necessarily, the next question is: what are the damages for which appellants are liable by virtue of exhibit A? The re-amended complaint contains no prayer (pp. 14–19, R on A) but it impliedly asks for the payment not only of the ₱2,000.00 stipulated in exhibit A's condition 6, but also of ₱200.00 as counsel's fees, of another ₱200.00 representing the value of the fish gathered by appellants, of ₱1,220.00, ₱40.00 and ₱20.00 representing appellee's expenses for the construction of the embankments surrounding the fishpond, the water gate and the hut for the watcher, respectively. The appealed judgment grants more than what appellee impliedly prayed for in this pleading, and certainly more than what appellee is legally entitled to considering the admitted pleadings and the admissible evidence. Condition 6 of exhibit A, which provides for the payment of ₱2,000.00 by any of its contracting parties who may fail to fulfill his obligation, is a veritable penal clause or provision for liquidated damage which substitutes and takes the place of indemnity for other damages and interests arising from appellant De Guzman's breach of his obligation to keep the leased property free from any encumbrance which may disturb appellee's possession during the lease period (art. 1152 of the old Civil Code, arts 1226 and 2226 of the new). "Insistence upon receiving satisfaction of penal clause operates as a renunciation of the right to other damages." (Navarro *vs.* Mallari, 45 Phil. 242.) Accordingly, since there is no legal difference between the penal clause and the liquidated damages, they should receive the same legal treatment; and appellee is entitled to recover only the agreed sum of ₱2,000.00 "damages and attorney's fees". Once the breach of condition 6 was proven, appellee's right to recover this amount arose, without the necessity of proving actual damages. "Indeed one of the primary purposes in fixing penalty or in liquidating damages, is to avoid such necessity." (Lambert *vs.* Fox, 26 Phil. 588.)

"When a penal clause has been agreed upon in a contract, rather than a security and sanction as punishment for the infraction thereof, it is a lawful means for repairing losses and damages, and upon

evidence of the violation of the conditions stipulated, the injured party is not obliged to prove losses and damages suffered, nor the extent of the same in order to demand the enforcement of the penal clause agreed upon, which is an exception to the common and general loss and indemnity clause." (Palacios vs. Municipality of Cavite, 12 Phil. 140.)

Moreover, as above stated, the instant action is for the satisfaction of the penal clause or liquidated damages of ₱2,000.00. Appellee is therefore not entitled to recover at the same time the sum of ₱3,200.00 representing the value of the milkfish harvest which appellee would have realized had the entire lease period of ten years not been interrupted through the fault of appellant De Guzman and his co-appellant Doria. For according to article 1227 of the new Civil Code (1153 of the old), the creditor cannot "demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him"—a condition not appearing in exhibit A nor shown by any evidence on record.

Not well taken is appellant's contention that the court below erred in admitting the re-amended complaint. By leave of the court, any pleading may be amended at any stage of the action before the rendition of the final judgment (sec. 2, rule 17, Rules of Court; Espiritu *vs.* Crossfield, 14 Phil. 588, 591; De Ocampo, et al. *vs.* Mañalac, 49 O. G. 926).

Having thus ruled on the legality of the trial court's action in admitting the re-amended complaint, all other assigned errors predicated on the alleged improper and illegal admission are deemed likewise adversely resolved.

Anent the claimed joint trial and the lifting of the declaration of default against appellant Doria, we find that even assuming that the lower court erred in not granting appellant's petition to that effect, this error is not reversible; for appellants themselves aver in their brief that "Jose Doria although declared in default, was presented as witness for the defendants without objection on the part of the plaintiff, and while on the stand, he substantiated the allegations of the answer and supplemental answer, aside from rebutting the testimony of plaintiff; as a matter of fact, his testimony pertained to matters of his defense." (p. 24, appellants' brief.)

As correctly contended by appellants, exhibit 9 does not prove that a partition had already been undertaken by the heirs of Domingo de Guzman and that the western half of the land described in tax declaration 42849 was adjudicated to appellant De Guzman. This exhibit pertains to the sale of a parcel of land described in tax declaration 18338; and while vendors Brigida de Guzman and Fulgencia Pascua state that they received the "same

by virtue of a deed of partition," this alleged deed of partition was not presented, nor was its non-presentation explained. However, the pro-indiviso character of the land subject of the contract of lease does not materially affect the result of this case as against appellants. Of course, being the owner of only one-seventh of the leased land, appellant De Guzman could not have legally disposed of the entire western half of the land specified in exhibit A, without first obtaining the consent and authority of his co-heirs and co-owners. But certainly, appellant De Guzman should not be the one to invoke the illegality and unenforceability of the lease contract for the purpose of evading payment of the penal clause or liquidated damage of ₱2,000.00. He is not the victim but the offender who is responsible for the defect in exhibit A for having leased the land in litigation as his exclusive property when, in fact, he owned only one-seventh thereof. He cannot therefore escape responsibility by shielding himself with the flaws of the contract of his own making (art. 1302, old Civil Code, 1397 of the new; Manresa, Vol. 8, 707). To rule otherwise would be tantamount to sanctioning deceit and bad faith and to authorize the author of such censurable act to enrich himself at the expense of appellee, from whom appellant De Guzman had admittedly received the advanced rental for ten years.

IN VIEW OF ALL THE FOREGOING, the appealed judgment is modified in the sense that appellants are ordered to jointly and severally pay appellee only the amount of ₱2,000.00 in liquidated damages as provided for in the penal clause of exhibit A. With costs against appellants.

IT IS SO ORDERED.

Dizon and *Makalintal, JJ.*, concur.

Judgment modified.

[No. 24510-R. June 21, 1960]

ELPIDIO BATHAN and APOLONIA BATHAN, plaintiffs and appellees, *vs.* LAUREANO ARENAS, defendant and appellant.

1. NEW TRIAL; MOTION UNACCOMPANIED BY AFFIDAVIT OF MERIT; EXISTENCE OF GOOD DEFENSE.—Where there are uncontroverted documents showing the defendant's good defense to plaintiff's action, defendant's failure to have his motion accompanied by affidavit of merits should be overlooked as a technicality that does not square with the liberal interpretation that the court should give to pleadings and the ends of justice. (Agaid *vs.* Soriano, CA-G. R. No. 14957-R, Feb. 4, 1956).

2. CONTRACTS; IDENTITY OF LAND; BOUNDARIES, NOT ITS AREA, PREVAILS.—When there is a conflict between the area and the boundaries of the land, the latter prevails (Garchitorena *vs.* Director of Lands, G. R. No. L-2151, Nov. 5, 1948). What really defines a piece of land is not the area, calculated with more or less certainty, mentioned in its description, but the boundaries laid down, as enclosing the land and indicating its limits (Loyola *vs.* Bartolome, 39 Phil., 544). When the deed describes a tract of land by boundaries, an additional statement as to the area included is of secondary importance, because it is presumed that the parties to the deed contracted with reference to the land specifically delimited in the description (Government of the Philippines *vs.* Abaya, 52 Phil., 261; Government *vs.* Abad, 47 Phil., 573; Sayo *vs.* Alarcon, CA-G. R. No. 3735-R, June 19, 1950).

APPEAL from a judgment of the Court of First Instance of Batangas. Vasquez, *J.*

The facts are stated in the opinion of the Court.

Ireneo M. Cabrera & Celso C. Dimayuga, for defendant and appellant.

Ernesto V. Encarnacion, for plaintiffs and appellees.

ANGELES, *J.:*

Subject of the controversy in this action is the eastern portion of a parcel of land having a configuration of a trapezoid, with the apex towards the north and the base towards the south, the sides of which are very much longer in proportion to the apex and base. The land is situated in barrio Pansipit, municipality of Agoncillo, Batangas.

For clarity and solely for the purpose of identification, we shall conventionally designate the whole parcel as lot A. The eastern portion thereof which is in dispute is composed of two lots: the one on the north we shall call as lot B; the other on the south, as lot C; and the undisputed western portion, as lot D.

The area of lot A is 4,991 square meters, that of lot B is 1,919 square meters, and that of lot C is 576 square meters. Lots B and C have a combined area of 2,495 square meters. Based on the tax declarations of said lots for the year 1921, it appears that lots B and C were declared in the name of Felix Bathan under tax declaration

Nos. 10430 (formerly tax declaration No. 5727, Exhibit C) and 2660 (Exhibit G), respectively, while lot D was declared in the name of Venancio Cabrera under tax declaration No. 10545. For reasons hereinafter to be stated, the tax declarations Nos. 10545 and 10430 in the name of Venancio Cabrera and Felix Bathan, respectively, were cancelled in the year 1929 and in lieu thereof a tax declaration combining the areas of lots B, C and D was prepared and recorded in the office of the provincial assessor of Batangas in the name of Josefa Tamayo. This is tax declaration No. 14399. (Exhibits C and F).

Admittedly lot A originally belonged to Peregrino Cabrera married to Filomena Encarnacion. The latter predeceased the former who died in 1905. They had two children, Veronica Cabrera and Venancio Cabrera. Veronica was married to Felix Bathan, and they had two children, Elpidio Bathan and Apolonia Bathan. Venancio Cabrera was married to Josefa Tamayo and they had six children, one of whom is David Cabrera. Venancio died in 1911, and Veronica died a few years thereafter. Josefa Tamayo and Felix Bathan are also now dead, but the record does not disclose the time of their deaths. This action was commenced by Elpidio Bathan and Apolonia Bathan, children of Felix Bathan and Veronica Cabrera, against Laureano Arenas, the purchaser of lot A from David Cabrera who as alleged had become the owner of said lot.

Plaintiffs' evidence tends to show that upon the death of Peregrino Cabrera, lot A was inherited by his two children, Veronica and Venancio. This was the only property left by the deceased. In the partition of said lot between the two heirs, the eastern portion thereof which consists of lots B and C was alloted to Veronica, and the western portion was given to Venancio. When Veronica died the eastern portion was inherited by her husband Felix Bathan and her children Elpidio and Apolonia Bathan; and when Venancio died the western portion was inherited by his wife Josefa Tamayo and his six children. An ancestral house belonging to Peregrino Cabrera and which was standing on lot C was also given to the children of Veronica. In this house Felix Bathan continued to live after the death of Veronica until it was demolished by him. Felix worked on lots B and C and on a part of the western portion belonging to Venancio Cabrera. The harvest in lots B and C was kept for himself and his children, as also his share as tenant in the harvest of that part of the western portion worked by him. Upon the demise of Felix Bathan, his son-in-law, Eliseo Endoso, husband of Apolonia Bathan, continued to work the land which his father-in-law had worked in his lifetime, and likewise he kept for his family and for his brother-in-law

the harvest of the eastern portion and his share in the harvest of that part of the western portion worked by him as tenant. During his lifetime, Felix Bathan wanted to sell lot B, but his children objected to the alienation thereof. The matter was brought to the attention of Josefa Tamayo, aunt of Elpidio and Apolonia Bathan. Josefa got angry with Felix Bathan, and to prevent Felix from selling lot B, Josefa Tamayo, with the conformity of Elpidio and Apolonia, ordered Felix Bathan to move the house on lot C to another place. Felix Bathan demolished the house and constructed another one on a parcel of land on the west of lot D which was purchased by him from Venancio Cabrera. It was also agreed among Josefa Tamayo and her nephew and niece that the tax declarations of lots B and C in the name of Felix Bathan should be cancelled, and in lieu thereof a combined tax declaration for lots B, C and D would be prepared in the name of Josefa Tamayo. This was accomplished and tax declaration No. 14399 was the result. For reasons not appearing in the record, however, the tax declaration No. 3923 (formerly tax declaration No. 2660) of lot C (Exhibit A) remained uncancelled in the name of Felix Bathan. This fact notwithstanding, tax declaration No. 14399 in the name of Josefa Tamayo shows that the land described therein and covered by said tax declaration has an area of 4,991 square meters, or equivalent to the combined areas of lots B, C and D. The action was commenced on June 2, 1958.

The defendant's evidence, on the other hand, tends to show that Peregrino Cabrera died siezed of three parcels of land situated in barrio Pansipit, Agoncillo, Batangas. Aside from the testimony of Pedro Cabrera, one of the children of Venancio Cabrera, about these three parcels of land, no other evidence to corroborate that fact was introduced by the defendant. Two of the three parcels of land, no other evidence to corroborate that fact was given to Veronica. Although Veronica inherited only one parcel, the area thereof is much bigger than the combined areas of the two parcels of land alloted to Venancio. Of the two parcels given to Venancio one was caused to be surveyed in 1939 by Josefa Tamayo as shown on the plan Psu–110310, Exhibit 1, the area of which is 4,936 square meters. According to the evidence of the defendant, the land in Exhibit 1 represents the lots B, C and D hereinabove mentioned. Upon the demise of Venancio, the land described in Exhibit 1 was inherited by his wife and his children, Pedro, Aurelia, Estanislao, David, Inocencio and Numeriano, all surnamed Cabrera.

Shortly before the last war, the children of Josefa Tamayo agreed among themselves to give or donate the land

in Exhibit 1 to their brother David Cabrera. On January 28, 1949, David Cabrera sold the land described in Exhibit 1 to the defendant Laureano Arenas, and the sale was evidenced by a notarial document, Exhibit 3. The defendant presented as exhibits the following tax declarations, to wit, No. 14399 which superseded tax declarations Nos. 10430 and 10545 beginning with the year 1929, and the land described therein appears to have an area of 4,991 square meters (Exhibit 4); No. 2419 which superseded tax declaration No. 14399 beginning with the year 1948 (Exhibit 4–A); and No. 6150 which superseded tax declaration No. 2419 beginning with the year 1954 (Exhibit 4–B). With regard to the possession of lot A, the plaintiffs admit that the defendant has been in possession of the same since he bought it from David Cabrera in January, 1949.

Upon the facts, the lower court rendered a decision declaring the plaintiffs the owners of the two parcels of land described in paragraph 2 of the complaint, specifically the eastern portion of the land described in the plan Psu–110310, Exhibit 1, without pronouncement as to damages as none have been proven by the plaintiffs; ordering the defendant Laureano Arenas to vacate the said eastern portion and to deliver the possession thereof to the plaintiffs; dismissing defendant's counterclaim; and ordering the defendant to pay the costs.

Twenty-nine days after counsel for the defendant had received notice of the judgment, the defendant moved for a new trial based on newly-discovered evidence, and prayed that the decision be set aside. The newly-discovered evidence is a deed of sale acknowledged before the notary public, Zacarias Marasigan of the municipality of Lemery, Batangas, dated November 27, 1926 wherein it is recited that for the sum of ₱60.00, Philippine currency, Felix Bathan sold, transferred and conveyed to Josefa Tamayo, a widow, a parcel of land described as follows:

"Ubicado en el barrio de Pansipit, municipio de Lemery, Batangas, con una extension superficial de 576 metros cuadrados, lindante al Norte, con el de Pedro Mariano y con mojones en este lado de algunos ponos de camachile; al Este, con el de Agapito Badillo y con mojones en este lado de varios ponos de madrecacaw; al Sur, con el de Anastacio Calapatia y con mojon en este lado de cerco de cañaespina, y al Oeste, con el de Venancio Cabrera y sin mojon aparente en este lado. El valor tasado de este solar expecificado en su correspondiente declaration o tax No. 10429 es ₱140."

It will be noticed in the deed of sale that while the stated area of the land sold is 576 square meters, the boundaries of the land described therein substantially coincide with the boundaries of the land in the plan Psu–110310, Exhibit 1. The deed of sale, besides purporting to have been signed by Felix Bathan, was also signed by Eliseo Endoso,

the son-in-law of Felix Bathan, as one of the instrumental witnesses to the deed.

It is alleged in the motion for new trial that the deed of sale "was discovered in the fold of one of the dresses of the deceased Josefa Tamayo;" and that "defendant could not, with reasonable diligence, have discovered and produced the said document at the trial of this case, considering that it was in a place where such things are not ordinarily kept;" The motion was not sworn to; however, a copy of the deed of sale was attached thereto. On the strength of the deed of sale, it is contended that the land described in the plan, Exhibit 1, belonged to the predecessors-in-interest of the defendant, and if a new trial is granted, the decision of the lower court would have to be reversed and another one entered in favor of the defendant.

The plaintiffs opposed the motion on two principal grounds: first, the motion does not conform with the requirement of paragraph 2, section 2, Rule 37 of the Rules of Court, in that it is not supported by affidavit of merits; second, the alleged deed of sale "is not one as contemplated under subdivision (*b*) of Section 1, Rule 37 of the Rules of Court", because "counsels for the defendant did not exercise reasonable diligence in the procurement of the alleged newly discovered evidence during the trial."

In the reply of the defendant to the opposition, the defendant submitted an affidavit of merit in relation to the discovery and probative value of the deed of sale, and reiterated the contention that as Laureano Arenas is the only defendant, a vendee of the land, he could not be charged of negligence because the document was never in his possession, and that the rulings in the cases cited in the opposition, and even the provision of the Rules of Court, are applicable only to actual parties in the case.

Resolving the motion and the opposition thereto, the court denied the motion for new trial, on the following ground:

"Without discussing the technical objection of the plaintiffs to the motion for new trial filed by the defendant, the Court finds that the motion of the defendant lacks substantial merit. The defendant does not only seek to introduce new evidence. It could be gathered from his motion and from the amended answer that he desires to be admitted, that he is materially changing his stand or theory in this case, but this result may not be accomplished under the guise of a motion for new trial. While it is true that the pleadings may be amended even after judgment in accordance with section . . . ., Rule . . . . of the Rules of Court, such amendment is allowable only whenever its purpose is to make the pleadings conform to the evidence already presented. Presently, the defendant wants to amend his

answer to adapt a new theory of the case, and to introduce new evidence in suport of such new theory.

"One of the requirements of a motion for new trial based on newly discovered evidence is that such evidence, if presented, would probably result in a modification of the judgment. The evidence proferred by the defendant does not fall into the category. The disputed area of land in this case is about 2,485 square meters, while the area of the land allegedly sold to Josefa Tamayo by Felix Bathan in 1926 is only 576 square meters. It will also be observed that the lot with an area of 576 square meters had been mentioned in the decision in connection with the fact that the same still remains for taxation purposes in the name of Felix Bathan, as shown by Exhibits 'A', 'C' and '4–C'. If it was true that the said lot was sold to Josefa Tamayo way back in 1926, it is strange why it remained registered in the name of Felix Bathan up to the present, notwithstanding the fact that Josefa Tamayo, as shown in the decision, had transferred in her name certain areas which were not even sold to her for the sole purpose of preventing Felix Bathan from disposing of the same."

From the decision, the defendant appealed.

In this appeal the defendant-appellant has assigned three errors one of which relates to the denial by the trial court of the motion for new trial, and the other two errors deal with the ownership of defendant's predecessors-in-interest of the land in question.

In view of the importance of the assignment of error relating to the motion for new trial and its controlling effect on the ultimate solution of the merits of the appeal; and considering that after a close study of the evidence it is clearly shown that they are diametrically opposed to the claim of either party, for, while the plaintiffs claim that the eastern portion, composed of lots B and C, the land in question, was the land which they inherited from their mother Veronica Cabrera and which was the share alloted to the latter in the partition of the only property with which Peregrino Cabrera died seized of, the defendant, on the other hand, asserts that said eastern portion was inherited by his predecessors-in-interest; and considering further that the evidence of the parties have not sufficiently established their respective claims, we deemed it wise to give priority to the consideration of the first error, because if the motion for new trial is meritorious the case will have to be remanded to the lower court for further proceedings.

With respect to the technical objection of the plaintiffs that the motion for new trial was not accompanied by affidavit of merits, we find that such technical defect was completely cured when the defendant attached an affidavit of merit substantially conforming to the requirements of the law to his rejoinder to the opposition of the plaintiffs. Moreover, taking into account that the ground for new trial was the discovery of an apparently authentic deed

of sale of the land in question, purporting to have been signed by the father of the plaintiffs, attested to by his son-in-law, and acknowledged before a notary public, a *prima facie* presumption of its genuineness and due execution arises, especially when in this case its authenticity as a binding document has not been seriously assailed or controverted by the party against whom it is presented. As was said in the case of Agaid *vs.* Soriano, et al., CA–G. R. No. 14957–R, Feb. 4, 1956, where there are uncontroverted documents showing that defendant has a good defense to plaintiff's action, defendant's failure to have his motion accompanied by affidavit of merits should be overlooked as a technicality that does not square with the liberal interpretation that the court should give to pleadings and the ends of justice.

The reason adduced by the lower court in denying the motion for new trial, that even if said deed of sale is admitted in evidence it cannot alter the decision because the area of the land given in said deed of sale is only 576 square meters while the area of the land involved in the action is 2,485 square meters, and that the ownership of the land with an area of 576 square meters has already been passed upon in the decision, seems to disregard altogether the uncontroverted fact, appearing in the deed of sale itself, that the stated boundaries of the land sold substantially coincide with the boundaries of the land in the plan, Exhibit 1. Such coincidence is significant. For the settled jurisprudence on the matter is that when there is a conflict between the area and the boundaries of the land, the latter prevails (Garchitorena *vs.* Director of Lands, G. R. No. L–2151, Nov. 5, 1948). What really defines a piece of land is not the area, calculated with more or less certainty, mentioned in its description, but the boundaries laid down, as enclosing the land and indicating its limits (Loyola *vs.* Bartolome, 39 Phil., 544). When the deed describes a tract of land by boundaries, an additional statement as to the area included is of secondary importance, because it is presumed that the parties to the deed contracted with reference to the land specifically delimited in the description (Government of the Philippines *vs.* Abaya, 52 Phil., 261; Government *vs.* Abad, 47 Phil., 573; Sayo *vs.* Alarcon, CA–G. R. No. 3735–R, June 19, 1950). Furthermore, guided by the settled rule that courts may grant new trials upon grounds other than those expressly provided for in the statutes, we hold that to avoid a miscarriage of justice, the defendant must be given the opportunity to prove the deed of sale in question. It is not in consonance with a liberal interpretation of the rules to sacrifice the rights of a party-litigant on the altar of technicality.

UPON THE FOREGOING CONSIDERATIONS, the decision of the lower court is hereby set aside, and the motion for new trial is granted. Accordingly, the record of the case is ordered remanded to the lower court for further proceedings. For equitable considerations, no pronouncement as to costs is made.

IT IS SO ORDERED.

Natividad and *Peña, JJ.*, concur.

Judgment set aside; new trial granted.

[No. 18257–R. June 30, 1960]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee *vs.* CUSTODIO TECSON, accused and appellant.

[No. 18257–R. June 30. 1960]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee *vs.* UY GUAT, ET AL., accused; CUSTODIO TECSON, accused and appellant.

1. CRIMINAL PROCEDURE; PLEA OF GUILTY.—Upon a judicial plea of guilty (Sec. 3, Rule 114, Rules of Court), interposed by the accused generally upon arraignment (before trial on the merits), the court, when satisfied that same had been interposed freely and voluntarily by the defendant who was well aware of its nature and consequences, may pronounce said accused "guilty" and forthwith convict him without requiring the prosecution to introduce its evidence. And it makes no difference that such plea was made after the introduction of prosecution's evidence. The effect is the same.
2. CRIMINAL LAW; MITIGATING CIRCUMSTANCE; PLEA OF GUILTY, WHEN NOT MITIGATING.—A judicial plea of guilty after the prosecution had introduced its evidence is no longer a mitigating circumstance (People *vs.* de la Peña, 66 Phil. 459). Besides, a plea of guilty as a mitigating circumstance is not applicable to a prosecution under special laws (Article 10, Revised Penal Code; People *vs.* Ramos, 44 O.G. 3288; U. S. *vs.* Barba, 29 Phil. 206; U. S. *vs.* Santiago 35 Phil. 20; People *vs.* Maiquez CA. 47 O. G. 4225).

APPEAL from a judgment of the Court of First Instance of Manila. Lucero, *J.*

The facts are stated in the opinion of the Court.

Federico B. Moreno and *Joaquin P. Yuseco, Jr.*, for accused and appellant.

Solicitor General Ambrosio Padilla and *Assistant Solicitor General Jose P. Alejandro,* for plaintiff and appellee.

PICCIO, *J.:*

The instant appeal arose out of a joint trial of Criminal Cases Nos. 32940 (CA–G.R. No. 18256–R) and 32941 (CA–G.R. No. 18257–R) before the Court of First Instance of Manila for a violation of Section 240 of the National Internal Revenue Code, and of Section 2756 of the Revised Administrative Code, respectively.

In the first case (Criminal Case No. 32940, CA–G.R. No. 18256–R) defendant was found guilty and sentenced to an imprisonment of three (3) years and a fine of ₱1,000.00 with subsidiary imprisonment in case of insolvency—which shall not exceed ⅓ of the sentence—plus the costs. In the second (Criminal Case No. 32941, CA–G.R. No. 18257–R), after the prosecution had introduced its evidence, defendant Custodio Tecson changed his former plea of "not guilty" to that of "guilty". Thereupon, the trial court pronounced him guilty as charged

and sentenced him to an imprisonment of one (1) year and a fine of ₱500.00, with subsidiary imprisonment in case of insolvency but not exceeding ⅓ of the sentence, plus the costs. (Co-accused Uy Guat who pleaded "not guilty" appears as not having as yet introduced his evidence.)

From both judgments of conviction, defendant Custodio Tecson appealed and assigned the following errors allegedly committed by the trial court, to wit:

The trial court erred:

1. In not acquitting appellant in Criminal Case No. 32940 on the basis of insufficiency of the evidence to establish a violation of said Section 240 of the National Internal Revenue Code;

2. In accepting appellant's plea of guilty in Criminal Case No. 32941 after the conclusion of the evidence by the prosecution when such evidence fails to establish that the offense charged—violation of Section 2756 of the Revised Administrative Code—had been committed and in not acquitting appellant.

Regarding the first assignment of errors: It is appellant's contention that the prosecution failed to establish the essential elements of Section 240 of the National Internal Revenue Code which provides:

"SEC. 240. Falsification or counterfeiting, restoration, or alteration of documentary stamps; possession or use of false, counterfeit, restored, or altered stamps.—Any person who makes, sells, or uses any false, counterfeit, restored, or altered documentary stamp, or makes, sells, or uses any die for printing or making stamps which are in imitation of or purport to be a lawful stamp or die of the kind required by the provisions of this Title, or who erases the cancellation marks or any stamp previously used, or who alters the written or printed figures or letters or cancellation marks on any stamp previously used, or who has in his possession any such false, counterfeit, restored, or altered stamp or die for the purpose of using the same in the payment of internal-revenue tax or in securing any exemption or privilege conferred by this Code, or who procures the commission of any such offense by another, shall for each offense be fined in a sum not less than one thousand pesos nor more than five thousand pesos and imprisoned for a term of not less than one year nor more than five years."

A perusal of the corresponding information in this case (No. 32940), to wit:

"That in and during the period comprised between the year 1951 and October 10, 1955, inclusive, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously erase the cancellation marks of previously used Internal Revenue documentary stamps in different denominations for the purpose of re-using and in effect actually using them in the payment of Internal Revenue taxes, in violation of said Section 240 of the National Internal Revenue Code, as amended."

reveals that the charge was for "erasing the cancellation marks on stamps previously used . . . for the purpose of re-using the same in the payment of Internal Revenue tax or in securing an exemption or privilege conferred

by this Code . . ." (as amended by Section 10 of Republic Act No. 48).

The facts as established by the prosecution are as follows: Upon a news-item appearing in a local newspaper "Bagong Buhay" that the then President Magsaysay had issued a directive to government agents to go after stamp racketeers, detectives from the Manila Police Department had secured from the Court of First Instance of Manila, then presided by the Honorable Judge, Edilberto Barot, a warrant to search the premises then occupied by appellant Tecson at 109 Nueva Street, Manila. With the search warrant, Det. Cortez of the Manila Police Department, together with several others, repaired to that address. Shortly after 12 o'clock that noon, they knocked at the closed door of defendant's office and found, upon entering, two employees of defendant washing used stamps. Tecson was there at the time and permitted a search of his premises—resulting in the discovery of enormous quantities of used washed stamps of different kinds and denomination (note photograph marked Exhibit A). In said premises were also found 2 jute sacks of used and unwashed stamps (Exhibits A–1 and A–2) and several boxes of the same kind of stamps (Exhibits A–3 to A–6), one cigarette box of used stamps (Exhibit A–7), one wooden box full of used stamps (Exhibit A–8), six paper boxes full of used stamps (Exhibits A–9 to A–14), two envelopes of used stamps (Exhibits A–15 and A–16), four basins full of used washed stamps (Exhibits A–25 to A–31, inclusive), chlorox liquid for washing stamps (Exhibit A–18), one flat iron (Exhibit A–19), one ink eradicator (Exhibit A–20), three pairs of scissors, lead pencil, small knife, brush, and rubber eraser (Exhibits A–21 to A–27).

At this juncture, defendant Uy Guat appeared, looking for Tecson. He was bringing with him a closed envelope (Exhibit E) to be sent to Leyte, with two stamps affixed on its front side and another stamp at the dorsal side—which Det. Catipon immediately confiscated. These three stamps were marked as Exhibits E–1 to E–3, inclusive. It was discovered that the said envelope in the possession of defendant Uy Guat contained 30 pieces of postage stamps, and six other stamps (Exhibits I–1 to I–6) taken from the diary of Uy Guat and found by an NBI chemist to have been washed and bleached (Exhibit G–8). Questioned, Uy Guat informed the detectives in the presence and within hearing of Custodio Tecson, that said stamps came from Custodio who therein and there confirmed said statement as true.

Some of the used stamps confiscated were sent to the NBI for examination while Tecson was brought to the MPD headquarters where he voluntarily signed a written

statement admitting, among others, of "having engaged in washing and bleaching used stamps; that the stamps found in the possession of Uy Guat had been washed and bleached by him (Tecson) so that Uy Guat might use them and that he was aware that the washing and bleaching of used stamps for the purpose of re-using them was against the law" (pp. 3–5, t.s.n., April 18, 1956).

It thus appears from the evidence that the defense does not dispute "appellant's having erased or washed off the cancellation marks in the stamps in question". It is so admitted even in his brief. What appellant insists upon is the alleged prosecution's failure to have established that the documentary stamps in question had been "previously used", simply because these stamps do not bear holes or perforation. This contention is not supported by the evidence, much less by the law on the subject. Considering again Section 240 of the National Internal Revenue Code, the defense argues that the term "restore" is "for the purpose of putting things in their original or former state or condition". Thus, "to restore a documentary stamp to its original or former state or condition, the cancellation mark will have to be washed or rubbed off and the hole *punched,* cut or perforated on the stamp will have to be patched up unless, of course, the stamp has been cancelled by stamping it with the date of cancellation, in which case there are no holes to be patched" (Section 237, National Internal Revenue Code).

An examination of the stamps in question impels us to disagree with appellant's contention that there are no perforation on the stamps in question to indicate their having been previously used. True it is that of the numerous postage and documentary stamps contained in Exhibit F–1, only two of them (one ₱5.00 and another ₱2.00 documentary stamps) bear holes or perforations. The rest of the documentary stamps contained therein are as follows: 8 documentary stamps appearing as cancelled merely by written dates stamped thereon, one of which bears the letters "PBC" or Philippine Bank of Commerce, but without holes; others are washed documentary stamps still attached to pieces of paper cancelled by dates written on the faces thereof; other documentary stamps appearing to have been cancelled by a Post Office of the Republic of the Philippines but without holes or perforations; five washed but not well bleached stamps without perforation and another washed documentary stamp cancelled by merely a written date "March 5, 1952" stamped thereon. All these aforementioned stamps, except the first two heretofore mentioned appear to have been cancelled by mere words written thereon, without holes or perforation.

Now, we are faced by the question: whether, such being the case, those documentary stamps could be considered as having been "previously used".

The Solicitor General, in his well-argued brief, answered this in the affirmative, adding that such process is "of public knowledge especially with respect to documentary stamps which had been affixed to checks and other documents". Indeed, it would be stretching the imagination too much to allow another meaning to be attached to this eventuality that when a postage or documentary stamp appears with dark lines or date or name of a post-office stamped thereon, that said stamp had been used for the purpose.

If, as has been found that some of those so stamped postage stamps were still attached to sheets of paper—presumably portions of wrappings or envelopes containing mail-matters, the conclusion is inevitable that said postage stamps must have been used for mailing purposes and not simply because some people must have glued those stamps and mark them with dates, numbers or names as a mere innocent pastime. While there may be quite a number of possible intentions which may be inferred from a human act, expositorily, we are perforce called upon to draw therefrom such conclusions as are compatible with the natural objectives or purposes, and not the whims or caprices, of human nature. In other words, it would be safe to conclude, as we hereby conclude, allowing ourselves to be drawn by reason and logic, that under the circumstances, there could not be other inference or conclusion but that said documentary or postage stamps had been "previously used".

But there is still another requisite for appellant's act to be punishable, namely, that his act of erasing the cancellation marks of "previously used" Internal Revenue documentary stamps was "for the purpose of re-using and in effect actually using them in the payment of Internal Revenue taxes . . ." (Section 240, National Internal Revenue Code, as amended). Again, that such was the purpose of appellant has been sufficiently established by the evidence.

It is sufficient that defendant Uy Guat was surprised in having in his possession at the time previously used stamps washed and bleached by his co-defendant Tecson and that Uy Guat admitted same in the presence and hearing of Tecson that it was the latter who had washed and bleached the same for the purpose of re-using them. And this was evidenced by his having at the time in his possession, a closed envelope intended to be sent to Leyte and containing 30 pieces of postage stamps, plus 6 other

stamps (Exhibits I–1 to I–6) with its frontal side as well as the dorsal side patched with washed and bleached postage stamps.

Add to this the purport and evidentiary value of the written statement freely and voluntarily signed by appellant Tecson "that he had been washing and bleaching postage stamps—which he had been selling—so that they may be re-used, and that he was all the time aware that the washing and bleaching of said stamps for the purpose of re-using them was against the law". Evidently this consciousness of his act and, consequently, his guilt must have prompted Tecson to change, as he did thereby change, his previous plea of "not guilty" to that of "guilty" after the prosecution had introduced its evidence in Criminal Case No. 32941.

We are constrained to disregard the claim of the defense that the appellant in both cases had been washing and bleaching those stamps for the purpose of selling them to foreigner-collectors of used stamps because, as has been established by the prosecution, foreign collectors are interested only in buying used postage stamps but not used, washed and bleached postage stamps. And this is true, as testified to by defense witnesses Rolando Garcia, with stamp collectors in the Philippines.

This altogether, notwithstanding, appellant questioned the legality and sufficiency of the judgment of conviction based merely upon his judicial plea of guilty because, according to him, said plea of guilty notwithstanding, the evidence introduced by the prosecution has not proven his guilt beyond reasonable doubt.

We have examined the evidence and are constrained to hereby conclude that with or without the said plea of guilty, the corresponding evidence was sufficient to convict him.

Returning to this plea—which in the instant case we have to consider as a judicial plea of guilty (see Section 3, Rule 114, Rules of Court) interposed by the defendant generally upon arraignment (before trial upon the merits): Upon such plea the court, when satisfied that same had been interposed freely and voluntarily by the defendant who was well aware of its nature and consequences, may pronounce said defendant "guilty" and forthwith convict him without requiring the prosecution to introduce its evidence. And it makes no difference, as in the instant case, that such plea was made after the introduction of prosecution's evidence. The effect is the same.

This plea of guilty, however, after the prosecution had introduced its evidence is no longer a mitigating circumstance (People *vs.* de la Peña, 66 Phil. 459). Besides, a plea of guilty as a mitigating circumstance is not applic-

able to a prosecution under special laws (Article 10, Revised Penal Code; People *vs.* Ramos, 44 O.G. 3288; U.S. *vs.* Barba, 29 Phil. 206; U.S. *vs.* Santiago, 35 Phil. 20; People *vs.* Maiquez [CA] 47 O.G. 4225).

The first and second assignments of errors are, therefore, not well taken.

The appealed decision in both cases is affirmed, with costs.

Martinez and *Narvasa, JJ.*, concur.

Judgment affirmed.